Court File No.: CV-21-656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

NOTICE OF JOINT CROSS-MOTION

(Motion by Thorneloe University and University of Sudbury for an order amending the DIP Amendment Agreement to delete the newly-added condition that the disclaimers must "become effective, binding and final on May 1, 2021" and directing the DIP advance to be paid to Laurentian, returnable April 29, 2021)

Thorneloe University, a university pursuant to *An Act to Incorporate Thorneloe University*, S.O. 1960-1961, c. 135 ("**Thorneloe**"), and the University of Sudbury, a university under *An Act respecting Sacred Heart College of Sudbury*, S.O. 1957, c. 160 ("**Sudbury**"), will make a cross-motion pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. c-36 ("**CCAA**") to a judge presiding over the Commercial List, on April 29, 2021 at 9:00 a.m or such other time as directed by the Court at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally or by video conference.

THE MOTION IS FOR:

1. **AN ORDER,** if necessary, that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated and that further service thereof is dispensed with;

2. **AN ORDER** amending the DIP Loan Amendment Agreement dated April 19, 2021[1] between Laurentian University of Sudbury ("**Laurentian**") and Firm Capital Corporation (the "**DIP Lender**"), to delete the following newly sought condition:

> 4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with each of Huntington University, Thorneloe University and the University of Sudbury (collectively, the Federated Universities") issued on April 1, 2021 shall become effective, binding and final on May 1, 2021.

(the "**New Disclaimer Term**");

3. **AN ORDER** with the above deletion, and if necessary, directing the DIP Lender to pay the next DIP advance of $10 million to Laurentian;

4. Costs; and

5. Such further and other relief as counsel may advise and this Court may deem just.

[1] The Loan Amendment Agreement dated April 19, 2021 is attached as Exhibit Z to the Affidavit of Dr. Robert Haché, sworn on April 21, 2021.

THE GROUNDS FOR THE MOTION ARE:

6. On April 21, 2021, Laurentian served a motion record (at 3:33 pm) for *inter alia* Court approval of a further advance on the DIP loan from the same DIP Lender but which contains new condition(s) including that the Court must uphold Laurentian's disclaimers given on April 1, 2021 and that the disclaimers must "become effective, binding and final on May 1, 2021" (the "**New Disclaimer Term**").

7. A chart comparing the original DIP terms as set out in the Debtor in Possession Financing Commitment dated January 29, 2021,[2] which were approved by the Court on February 11, 2021, and the new DIP Terms now sought to be approved is attached hereto as **Schedule "A"**;

8. The New Disclaimer Term should not be approved by the Court for reasons including that:

a) it is unreasonable, unfair and unnecessary for the financial restructuring of Laurentian;

b) it is highly prejudicial to Thorneloe and Sudbury;

c) is a flagrant attempt to deliberately fetter the discretion of the Court at the hearing of Thorneloe and Sudbury's contested disclaimer motions and as such, *inter alia*, is

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[2] The Debtor in Possession Financing Commitment dated January 29, 2021 is attached as HHH to the Affidavit of Dr. Robert Haché, sworn on January 30, 2021.

contrary to section 32 of the CCAA and thereby transposes a Court-supervised CCAA process into a DIP-run process;

d) it is contrary to section 18.6 of the CCAA, which requires "[a]ny interested person in any [CCAA] proceeding to act in good faith" and which applies to the DIP Lender; and

e) it is contrary to the CCAA and applicable rules of practice as any order issued under the CCAA is subject to a 21-day appeal period under sections 13 and 14 of the CCAA and as such the disclaimers, even if upheld by the Court, cannot be "final" by May 1, 2021;

f) there is no economic or equitable basis to justify the addition of the New Disclaimer Term into the same DIP terms that the court previously approved on February 11, 2021; and

g) there is no impairment to the security, collateral or priority of the DIP Lender by deleting the New Disclaimer Term.

9. Sections 11, 13, 14, 18.6, and 32 of the CCAA; and

10. Such further grounds as counsel may advise and this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE:

1. The affidavits of John Gibaut, sworn on April 19, 2021, Allan Nackan, sworn on April 19, 2021, and Sydney Edmonds, sworn on April 15, 2021, previously filed herein;

2. The affidavits of Pierre Riopel sworn on April 19 and 22, 2021, previously filed herein; and

3. Such further and other material as counsel may advise and this Honourable Court permits.

April 22, 2021

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TO: SERVICE LIST

SCHEDULE "A"

COMPARISON OF ORIGINAL AND AMENDED DIP TERMS

	ORIGINAL DIP TERMS APPROVED BY THE COURT ON FEBRUARY 11, 2021	**NEW DIP TERMS SOUGHT ON MOTION ON APRIL 21, 2021**
PURPOSE OF FINANCING/ **LOAN AMOUNT**	A loan of $25,000,000.00 secured by super-priority charge pursuant to the court's Initial Order , priority charge on all of the Property (as defined in the Initial Order) of the Borrower pursuant to a valid and perfected Court-ordered charge in the CCAA proceeding, ranking subordinate only to: (i) the Administration Charge that is not to exceed $1,250,000, (ii) the Directors' Charge that is not to exceed $2,000,000, and (iii) any valid purchase money security interests, including the registrations made under the *Personal Property Security Act* (Ontario) attached hereto as Schedule "A" (the "**DIP Charge**").	The DIP Facility and DIP Financing as provided in the DIP Loan Agreement shall be amended and increased as follows: Existing Loan Amount (“Facility A”): $25,000,000.00 Add: Subject Loan Increase (“Facility B”) $10,000,000.00 Revised Loan Amount (the “Loan”)$35,000,000.00
ADVANCE OF FUNDS	The Loan shall be advanced in two (2) advances, with the initial advance to be made no later than three (3) business days after the "Conditions to Funding" have been satisfied, with the amount of the initial advance to be determined no later than one (1) business day after receipt of the Initial Order approving the DIP Financing. The balance of the Loan shall be advanced upon five (5) days' written notice by the Borrower.	The parties acknowledge that all DIP Advances under Facility A have been advanced to the Borrower. DIP Advances as provided in the DIP Loan Agreement shall be amended to provide for Advances in respect of Facility B as follows: Upon the Conditions to Funding specified herein being satisfied, Facility B shall be advanced upon five (5) days’ written request by the Borrower in amounts as specified by the Borrower, to be in draws of not less than $3,000,000.
INTEREST RATE	Floating at the greater of 8.50% Per Annum or the TD Canada Trust Posted Bank Prime Rate of Interest from time to time plus 6.05% Per Annum.	
TERM	To mature May 1, 2021 (the "**Maturity Date**"). Provided the DIP Financing is not in default, the DIP Lender	Repayment and Maturity Date as provided in the DIP Loan Agreement to be extended to August 31, 2021 (the “**Maturity Date**” or the “**Term**”).

	shall agree to extend the Maturity Date to a date to be determined by further agreement between the Borrower and the DIP Lender, but in any event, such extension shall be for a minimum period of 90 additional days (July 30, 2021) and a maximum of 5 months (October 1, 2021), subject to the Borrower achieving the following milestones by April 30, 2021, to the satisfaction of the Lender in its sole and unfettered discretion: 1. The Borrower enters into a negotiated settlement agreement with the Laurentian University Faculty Association ("**LUFA**") with respect to the terms of a collective agreement between LUFA and the Borrower (the "**Faculty Settlement**"); 2. The Borrower reaches consensus among all necessary stakeholders on an academic restructuring of the Borrower's program offerings (the "**Academic Restructuring**"); and 3. The Borrower provides a revised cash flow forecast and multi-year budget to the DIP Lender, taking into consideration the implementation of the Faculty Settlement and the Academic Restructuring, demonstrating to the Lender, in its sole and unfettered discretion, that the Borrower is financially sustainable.	
EXIT FINANCING	Should the Borrower put forward a Plan of Compromise or Arrangement satisfactory to the Lender, the Lender shall have the right of first refusal to provide exit financing of the Plan, save and except if the Province of Ontario agrees to provide exit financing to the Borrower.	

PAYMENTS	Due monthly, interest only, and compounded monthly on each payment date on the total of the principal balance plus accrued interest outstanding on the payment date.	
VOLUNTARY PREPAYMENT	Voluntary prepayment of the DIP Financing is permitted without penalty in whole or in partial payments of at least $500,000, with prior written notice to the DIP Lender.	
SECURITY	The Borrower shall provide or cause to be provided, the security and agreements listed below, in a form and substance satisfactory to the DIP Lender, including, but not limited to: 1. The DIP Charge; 2. A Promissory Note and/or Loan Agreement; 3. Assignment of insurance on the real estate owned by the Borrower, with said insurance to be in place (evidence to be provided to DIP Lender's counsel) and to continue to be in place during the CCAA proceedings; and 4. Such further security and other documentation that the DIP Lender and its solicitor may request and reasonably require.	
ADDITIONAL LOAN SECURITY		In addition to the security provided to the Borrower pursuant to the Commitment, this Amendment shall be subject to the Borrower providing the additional security and other documents listed below, in a form and substance satisfactory to the DIP Lender, including, but not limited to: 1. An Order granted by the Court in the CCAA proceeding which provides for an increase in the DIP Lender's Charge to $35,000,000 as a valid and perfected super-priority Court-Ordered charge on all of the Property (as defined in the Amended and Restated Initial Order) of the Borrower, ranking subordinate to only the Administration Charge and to a

		portion of the Directors' Charge in the amount of $2,000,000 as set out in the Amended and Restated Initial Order, and to any valid purchase money security interest. 2. An amended Promissory Note and/or Amendment to the DIP Loan Agreement. 3. A first priority assignment of rents registered on all property owned by the Borrower. 4. Such further security and other documentation that the DIP Lender and its solicitor may request and reasonably require
CONDITIONS TO FUNDING	This Commitment is subject to the following conditions that are to be satisfied at the time of the advance of funds under this Commitment, which conditions the DIP Lender in its sole discretion may waive in full or in part: 1. Written acceptance of this Commitment by the Borrower. 2. Borrower to provide covenant on closing to the DIP Lender that no priming charge(s) ranking or purporting to rank prior to or *pari passu* with the DIP Charge shall be sought by the Borrower (save and except for the Administration Charge and the Directors' Charge) to any person other than the DIP Lender without the prior consent in writing of the DIP Lender, which consent may be unreasonably withheld; and that the Borrower will provide notice to the DIP Lender of any proceeding which could have an adverse effect on the Loan or the priority of the DIP Charge. 3. It is furthermore agreed, that the Borrower will give the DIP Lender the first opportunity to fund further loans secured by the DIP Charge, provided that such further loans are on the same terms as the Borrower has been otherwise offered. 4. Other than as permitted under the Initial Order of the Court as	In addition to the Conditions Precedent to Advances provided for in section 13 of the DIP Loan Agreement, this Amendment and any advance of funds hereunder is subject to the following conditions being satisfied to the satisfaction of the DIP Lender by the specific dates set out below or, if not otherwise specified, by May 1, 2021: 1. Written acceptance of this Amendment by the Borrower by April 19, 2021 subject only to the Borrower's Board of Governors approval, if applicable, and Court approval. 2. The Term Sheets between the Borrower and each of the Laurentian University Faculty Association ("LUFA") and the Laurentian University Staff Union, including but not limited to the Pension Term Sheets which are a Schedule thereto (together, and collectively, the "Union Term Sheets") are each ratified by the members by no later than 9 am on Wednesday, April 14, 2021 and all necessary steps are taken to implement same. 3. An Order is granted in form and substance satisfactory in all respects to the DIP Lender: (i) authorizing the Borrower to execute this Amendment and approving the

	same may be amended from time to time, the Borrower shall not distribute funds to any pre-filing creditors, save for under the Administration Charge or the Directors' Charge, without the DIP Lender's consent or without further Order of the Court. 5. DIP Lender shall have the right to charge for all reasonable costs and expenses incurred by the DIP Lender in connection with this Loan, including reasonable legal fees and costs and costs and expenses incurred in monitoring the Loan and CCAA proceedings and enforcing the DIP Lender's rights under this Commitment and the DIP Charge. 6. DIP Lender shall not be obligated to provide the Loan if the Initial Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the DIP Lender (such consent not to be unreasonably withheld where any such amendment does not pertain to the DIP Financing) 7. Delivery and registration of the Security in a form acceptable to the DIP Lender; 8. The Initial Order approving the DIP Financing shall be in form and substance satisfactory to the DIP Lender, and shall include: a) Provisions approving this Commitment and the DIP Financing created herein; b) Provisions granting the DIP Charge in favour of the DIP Lender subject only to the Administrative Charge and the Directors' Charge; c)Provisions authorizing the DIP Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Charge; d) Provisions providing that the DIP Lender's Charge shall be	increase to the Loan created herein; (ii) increasing the DIP Lender's Charge under the Amended and Restated Initial Order to include the additional amount of Facility B and the aggregate Loan contemplated hereunder; (iii) extending all aspects of the stay of proceedings pursuant to the Amended and Restated Initial Order to August 31, 2021; (iv) approving the Union Term Sheets; (v) approving the Transition Services Agreement with Huntington University; and (vi) confirming and extending all rights in favour of the DIP Lender as exist under the Amended and Restated Initial Order; and in each case authorizing and directing the Borrower to implement same. 4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with each of Huntington University, Thorneloe University and the University of Sudbury (collectively, the Federated Universities") issued on April 1, 2021 shall become effective, binding and final on May 1, 2021. 5. Other than the academic restructuring passed by Senate on April 6, 2021, no further academic restructuring of the Borrower's programs occurs without the DIP Lender's consent (which may be withheld in its sole discretion). 6. The Borrower shall have provided a revised cash flow forecast and multi-year financial forecast to the DIP Lender, demonstrating to the DIP Lender, in its sole discretion, that the Borrower will be financially sustainable

	valid and effective to secure all of the obligations of the Borrower to the DIP Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower; e) provisions declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the DIP Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and f) provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrower, other than as permitted herein and in the Initial Order, as same may be amended from time to time. 9. The Initial Order that approves the DIP Financing will provide that the DIP Lender shall be an unaffected creditor in the CCAA proceedings.	and achieve operational stability upon emergence from the CCAA Proceeding. 7. No material changes to the Borrower's governance or senior leadership shall occur that, in the DIP Lender's sole discretion, creates a situation of increased instability during the Term of the Loan. 8. No Report is filed by the Monitor in the CCAA proceeding which advises of a material adverse event. 9. Other than as may be requested by the Borrower with the consent of the DIP Lender and with the Monitor's support, no Court Order is issued which affects the Borrower, or any of its Business. 10. The DIP Lender shall not be obligated to advance funds under this Amendment if: (i) the Amended and Restated Initial Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the DIP Lender; or (ii) an Order is granted by the Court at any time which the DIP Lender does not support. 11. The Borrower shall have sought and obtained from the Court, by May 31, 2021 or such later date as the DIP Lender may agree, a Claims Process Order on terms acceptable to the DIP Lender for the commencement of a claims process with respect to all creditor claims.
RESTRICTIVE CONDITIONS	The DIP Financing is subject to the following restrictive conditions that the Borrower covenants to follow: 1. Until the Loan has been repaid in full the Borrower covenants and agrees not to do or cause to be done the following: i. Apply for, or consent to, any change, amendment or modification to the Initial Order as it applies to the DIP	

	Financing (the "Change to the Order") without the prior written consent of the Lender, or fail to oppose any application or motion for a Change to the Order that is opposed by the DIP Lender; and ii. Initiate or consent to any order or consent to any change, amendment or modification to any Court order issued in the CCAA proceedings that affects the DIP Lender without the prior written consent of the DIP Lender.	
AFFIRMATIVE COVENANTS		The Loan is subject to the following conditions that the Borrower must comply with as a condition of any further advance hereunder: 1. The Borrower shall have entered into a negotiated settlement, resolution or determination by binding Arbitration of all of the Grievances referenced in the Order Appointing Mediator dated February 5, 2021, by May 30,2021. The outcome of those determinations must be acceptable to the DIP Lender to the extent such determinations have any impact on the Borrower's financial sustainability or operational stability. 2. The issues specifically identified in the Term Sheet between the Borrower and LUFA that are to be determined through binding arbitration shall be resolved by June 18, 2021. The outcome of those determinations must be acceptable to the DIP Lender to the extent such determinations have any impact on the Borrower's financial sustainability or operational stability.
COMMITMENT FEE/ **LOAN AMENDMENT FEE**	$500,000.00, payable to Firm Capital Corporation The $500,000.00 Commitment Fee shall be deemed to have been fully earned by FCC and payable on the date that the Court issues the Initial Order approving the DIP Financing, which is contemplated to be February	$200,000.00 payable to FCC. The $200,000.00 Loan Amendment Fee shall be deemed to have been fully earned by FCC and payable upon the Court issuing an Order approving this Amendment. In the event the Loan Amendment Fee becomes fully earned and payable and is not paid prior to the

	1, 2021. In the event the Commitment Fee becomes fully earned and payable and is not paid prior to the advance of funds under the Loan, the Borrower hereby irrevocably directs the DIP Lender's solicitor to pay the Commitment Fee from the closing proceeds on the date of the advance under the DIP Financing.	advance of funds under this Amendment, the Borrower hereby irrevocably directs the DIP Lender's solicitor to pay the Loan Amendment Fee from the advance under this Amendment.
MONITOR	The monitor appointed pursuant to the Initial Order shall be Ernst & Young Inc. (the "**Monitor**"), and Ms. Sharon Hamilton shall be the person with primary responsibility for fulfillment of the Monitor's duties in connection with the CCAA proceeding. If any Order is made by the Court replacing Ernst & Young Inc. as Monitor, the DIP Financing shall become immediately due and payable	
DOCUMENTATION TO BE PROVIDED	The Borrower confirms that the information relating to its real property provided to FCC in the electronic data room for prospective DIP lenders is accurate and complete to the best of its information, and will provide such other information or documentation as may be requested from time to time.	
LEGAL FEES	The Borrower will be responsible for all of the DIP Lender's reasonable legal fees incurred in respect of the DIP Financing.	
COMMITMENT ACCEPTANCE	The Borrower agrees that Firm Capital Corporation's services are rendered at the time this Commitment is both accepted by the Borrower and approved by the Court. If the terms and conditions set out herein are satisfactory and the Borrower is prepared to seek Court approval of same, kindly acknowledge acceptance by initialling each page and signing below. This offer of financing will be open for acceptance by the Borrower until 10 a.m. on February 1, 2021. **The Borrower acknowledges having received and/or executed a Borrower Disclosure Form at least 48 hours prior to signing this**	The Borrower agrees that FCC's services are rendered at the time this Amendment is accepted by the Borrower, approved by the Borrower's Board of Governors and approved by the Court. If the terms and conditions set out herein are satisfactory and the Borrower is prepared to seek Court approval of same, kindly acknowledge acceptance by initialling each page and signing below. This offer of financing will be open for acceptance by the Borrower until 5 p.m. on April 23, 2021. **The Borrower acknowledges having received and/or executed a Borrower Disclosure Form at least 48 hours prior to signing this**

	Commitment and a copy has been retained by the Borrower. In case of any inconsistency or conflict between any provisions of this Commitment and any provisions of the security documents for the Loan, the DIP Lender may, in their sole discretion, determine which shall prevail.	**Amendment and a copy has been retained by the Borrower.** In case of any inconsistency or conflict between any provisions of this Amendment and any provisions of the security documents for the Loan, the DIP Lender may, in their sole discretion, determine which shall prevail.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

Court File No.: CV-21-656040-00CL

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Proceeding commenced at Toronto

NOTICE OF CROSS-MOTION

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