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**

Applicant

FACTUM OF THE APPLICANT
(Compensation Claims Process)

August 13, 2021

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FACTUM OF THE APPLICANT

PART I - OVERVIEW[1]

1. The Applicant seeks approval of the Compensation Claims Process Order to allow for the implementation of a fair and efficient process for determining and resolving all Compensation Claims that exist against the Applicant.

2. The Compensation Claims Process Order is the second step in the Applicant's effort to establish a comprehensive claims process for identifying and addressing all existing claims. This Court previously granted the Amended and Restated Claims Process Order (the "**Claims Process Order**"), which commenced that claims process.

3. The Claims Process Order excluded claims against the Applicant held by Compensation Claimants (as defined below) and contemplated that the Applicant would consult with certain stakeholders and develop a separate Compensation Claims Process (defined below), which would then be approved by the Court.

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[1] All capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Compensation Claims Process Order or the Sixth Report of the Monitor dated August 12, 2021 (the "**Sixth Report**").

4. The Applicant, with the assistance of the Monitor, has spent significant time conducting the necessary consultations with stakeholders and developing a comprehensive Compensation Claims Methodology.

5. The result of those extensive efforts is the Compensation Claims Process (defined below) for which the Applicant now seeks this Court's approval.

6. The Court is requested to approve the Compensation Claims Process Order and the Compensation Claims Methodology (together, the "**Compensation Claims Process**") for the following reasons:

   (a) the Compensation Claims Process is fair and reasonable;

   (b) the Compensation Claims Process is efficient for the determination and resolution of approximately 1,200 Compensation Claims against the Applicant;

   (c) the Compensation Claims Process has been developed in consultation with certain key stakeholders of the Applicant, as required in the Claims Process Order;

   (d) the Compensation Claims Process will avoid requiring employees to value their potential Compensation Claims, which involves complex calculations and potentially actuarial valuation;

   (e) the Compensation Claims process will dramatically streamline the filing and determination of Compensation Claims, which will permit the Applicant to continue to advance its restructuring efforts on an expedited basis; and

   (f) the Compensation Claims Process has been tailored to the specific context of this CCAA proceeding and provides for an efficient and cost-effective determination of all Compensation Claims against the Applicant.

PART II - FACTS

7. A brief summary of the background of this CCAA proceeding is provided in the Sixth Report.

Background and the Claims Process Order

8. On February 1, 2021, Laurentian University of Sudbury commenced proceedings under the CCAA. This step was taken as a result of an extreme liquidity crisis forcing the Applicant to either: (i) commence insolvency proceedings in an effort to restructure and save the university; or (ii) close its doors, as the Applicant would otherwise be unable to meet payroll obligations during the month of February.

9. Since then, the Applicant has taken significant steps to restructure its operations in order to move toward financial and operational stability. One aspect of the Applicant's restructuring involves identifying the universe of claims that exist against the Applicant and its Directors and Officers. On May 31, 2021, this Court issued the Claims Process Order that commenced such claims process.

10. The Claims Process Order excluded claims against the Applicant by current and former employees of the Applicant, retirees of the Applicant, and certain other third parties, who are referred to herein as potential "**Compensation Claimants**". The Claims Process Order contemplated that the Applicant, with the assistance of the Monitor, would develop and seek approval of a separate Compensation Claims Process and Compensation Claims Methodology, in consultation with certain stakeholders of the Applicant.

Development and Consultation

11. The Compensation Claims Process seeks to continue to advance the Applicant's restructuring efforts by establishing and implementing a fair and efficient process whereby the Applicant can determine the universe of Compensation Claims that exist against the Applicant, in order to allow the Applicant and the Monitor to address such claims in contemplation and formulation of a Plan of Compromise or Arrangement (the "**Plan**").

12. Pursuant to the Claims Process Order, the Applicant is required to: (i) establish the primary categories of claims to be covered in the Compensation Claims Process, (ii) determine what information is available with respect to those claims and how the information to calculate such claims can be compiled, (iii) establish the Compensation Claims Methodology, and (iv) consider alternative procedures for notification and claims processing.[2]

13. In doing so, the Claims Process Order requires the Applicant and the Monitor to consult with representatives of LUFA and LUSU. In addition, solely with respect to claims relating to the participation in the RHBP, the Applicant and the Monitor must consult with Huntington University, University of Sudbury, and Thorneloe University, and certain relevant employers, including the Sudbury Neutrino Observatory Laboratory ("**SNOLab**"), the Centre for Excellence in Mining Innovation ("**CEMI**"), and the Mining Innovation Rehabilitation and Applied Research Corporation ("**MIRARCO**"), whose employees formerly participated in the RHBP that was administered by the Applicant.[3]

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[2] Claims Process Order dated May 31, 2021, s. 45.
[3] *Ibid*.

14. Since the Claims Process Order was granted, the Applicant and the Monitor have worked extensively on developing the Compensation Claims Process.

15. As the Applicant and the Monitor developed the Compensation Claims Process the definition of Compensation Claims as originally defined in the Claims Process Order has been amended and expanded. Attached hereto as **Schedule "C"** is a comparison showing the changes made to the definition of Compensation Claim from the Claims Process Order to the Compensation Claims Process Order.

16. During its development, the Applicant and the Monitor have had several discussions regarding the Compensation Claims Process with representatives of LUFA, LUSU, and the pre-filing lenders.[4] Further, the Applicant and the Monitor have had discussions with the Federated Universities, MIRARCO, CEMI, and SNOLab in respect of the treatment of RHBP claims in the Compensation Claims Process.[5]

Summary of the Compensation Claims Process Order

17. The following provides a summary of the key terms of the Compensation Claims Process Order:

   (a) the Compensation Claims Methodology is approved, and it shall govern the determination of all Compensation Claims against the Applicant;[6]

   (b) the Monitor will provide notice of the Compensation Claims Process to the general public by posting the Compensation Claims Process Order, the Compensation Claims Methodology, and the Compensation Claim Inquiry Form to its website,

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[4] Sixth Report at paras. 64 and 135 - 137.
[5] Sixth Report at paras. 64 and 135 - 137.
[6] Sixth Report at para. 35(b).

and cause the Notice for Publication to Employees to be published in national and local newspapers;[7]

(c) the Applicant, the Monitor, and the Unions may share information with each other in an effort to assist the Monitor in preparing the Statements of Compensation Claims and verifying the accuracy of the Compensation Claim Information;

(d) the Monitor, with the assistance of the Applicant, is required to prepare and send Statements of Compensation Claim to each known, potential Compensation Claimant at their last known municipal address or email address, as applicable. The potential Compensation Claimant is not required to prepare or file a Compensation Claim at first instance;[8]

(e) any Person who believes that they have a Compensation Claim that does not receive a Statement of Compensation Claim shall submit a Compensation Claim Inquiry Form to the Monitor. Once a Compensation Claim Inquiry Form is received, the Monitor (with the assistance of the Applicant), shall determine whether such Person has a Compensation Claim and shall send a Statement of Compensation Claim to that Person indicating that Person's Compensation Claim, if any;[9]

(f) with respect to any Person who believes that they have a Compensation Claim but does not receive a Statement of Compensation Claim, the Compensation Claims Process establishes a bar date of October 14, 2021, for any such Person to submit a Compensation Claim Inquiry Form to the Monitor; [10]

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[7] Sixth Report at paras. 45 – 46.
[8] Sixth Report at para. 47.
[9] Sixth Report at para. 50.
[10] Sixth Report at para. 57.

(g) with respect to any Person who receives a Statement of Compensation Claim and wishes to dispute the Compensation Claim Information, the Compensation Claims Process establishes a bar date of October 14, 2021, for any such Person to deliver a Notice of Dispute to the Monitor. In the event that the Applicant or the Monitor become aware of any further Compensation Claimants following the date that the Compensation Claims Process Order is granted, such Compensation Claimants shall have thirty (30) calendar days following the date that the Monitor sends the Statement of Compensation Claim to such Person to deliver a Notice of Dispute to the Monitor if that Person wishes to dispute the Compensation Claim Information;[11]

(h) in the event that any potential Compensation Claimants do not send a Compensation Claim Inquiry Form or deliver a Notice of Dispute to the Monitor in accordance with the applicable bar dates, such Compensation Claimants are forever barred from asserting or enforcing against the Applicant any Compensation Claim that is not set forth in a Statement of Compensation Claim, voting in respect of any Plan and/or receiving distributions;[12] and

(i) with respect to any disputes arising in the Compensation Claims Process, the Compensation Claims Process Order adopts the same processes for the determination of such dispute as set out in paragraphs 35 to 39 of the Claims Process Order, including review by the Monitor and an ability to subsequently have any remaining claims addressed by a Claims Officer or the Court.[13]

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[11] Sixth Report at para. 55.
[12] Sixth Report at paras. 56 and 57.
[13] Sixth Report at para. 62.

Summary of the Compensation Claims Methodology

18. The Compensation Claims Methodology sets out the methodology for calculating all Compensation Claims and includes, without limitation claims of:

(a) Active Employees as of the date of the Compensation Claims Process Order;

(b) Terminated Employees whose employment with the Applicant was terminated by the Applicant or who received notice of termination of employment between the Filing Date and the date of the Compensation Claims Process Order;

(c) Former Employees whose employment with the Applicant ended on or before the Filing Date (other than Retirees); and

(d) Retirees who retired from employment with the Applicant and were eligible to receive Registered Pension Plan payments or to make claims under the RHBP prior to the Filing Date.[14]

19. The Compensation Claim Methodology was developed primarily based on the provisions of the applicable collective agreements, employment contracts, terms and conditions of employment, or internal policies of the Applicant. In the event that there is a difference between the proposed Compensation Claims Methodology and any applicable agreement, contract, or policy, the Compensation Claims Methodology shall govern.[15]

20. The Compensation Claims Methodology addresses the following categories of Compensation Claims, each of which are discussed in further detail below:

(a) Termination and Severance Claims;

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[14] Sixth Report at para. 62.
[15] Sixth Report at paras. 65 - 67.

(b) Administrative Leave;

(c) Salary or Benefit Continuance (including early retirement supplement);

(d) Vacation Pay Claims;

(e) RHBP Claims;

(f) SuRP Claims, including any individual supplemental pension claim;

(g) Grievance Awards;

(h) Section 33 Claims;

(i) Registered Pension Plan Claims; and

(j) Professional and/or Research Allowances.[16]

21. Within each category of Compensation Claim, the Applicant and the Monitor, in consultation with LUFA, LUSU, and other stakeholders, have attempted to identify and outline various claims and scenarios that may be raised by Compensation Claimants, and provide for a general methodology that can be applied equitably and efficiently amongst the Compensation Claimants.[17]

22. The Compensation Claims Methodology has been developed in order to determine any and all Compensation Claims that Compensation Claimants may have against the Applicant.[18] The Applicant and the Monitor are not aware of any other categories of claim that a Compensation Claimant may assert against the Applicant. In the event that the Compensation Claims Methodology does not address a Compensation Claim, the Compensation Claims Process provides a mechanism for a Compensation Claimant to

[16] Sixth Report at para. 68.
[17] Sixth Report at para. 70.
[18] Sixth Report at para. 41.

identify such Compensation Claim and submit a Notice of Dispute form disputing the Compensation Claim Information for consideration.[19]

Termination and Severance Claims

23. The Compensation Claims Methodology calculates the termination and severance claims of the various employees as follows:

(a) LUFA members: pursuant to Article 10.10 of the LUFA CA (Redundancy);

(b) LUSU members: pursuant to Article 10 of the LUSU CA (Seniority, Layoff, and Recall) and Article 19 of the LUSU CA (Redundancy of Job);

(c) Academic Senior Leaders: The same manner as LUFA members;

(d) LUAPS members: Based on the LUAPS Terms and Conditions; and

(e) Non-unionized employees:

(i) either:

(1) The amounts provided for in such employees' employment agreement; or

(2) Where no employment agreement exists, the Monitor's assessment of such employees' entitlement in accordance with common law, taking into account the age, years of service, compensation, and position of the employee; and

(ii) Entitlement under the *Employment Standards Act*.[20]

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[19] Sixth Report at paras. 133 - 134.
[20] Sixth Report at paras. 71 – 75.

24. The Compensation Claims Methodology provides that termination and severance claims are based on a defined calculation and have been set out to address, among other things, the impact of working notice, tenured status of the terminated employee (if applicable), threshold years of service, potential recall rights, and/or prior notice by the employee of an intention to retire or resign.[21]

25. Further, the termination and severance claims provide for a claim for loss of employee benefits (excluding RHBP, SuRP, and vacation pay, which are separately addressed in the Compensation Claims Methodology) based on the Applicant's estimated cost of benefits previously provided to such employee through the relevant notice and severance claim period, or ESA notice period.[22]

Administrative Leave for Senior Leaders

26. The Compensation Claims Methodology provides that terminated Academic Senior Leaders will have a Compensation Claim based on the Applicant's calculation of the administrative leave earned and accrued as of April 30, 2021, consistent with the Senior Leaders Terms and Conditions.[23]

Vacation Pay Claims

27. Vacation accrued after the Filing Date (less any vacation days taken during the CCAA proceedings) was paid to Terminated Employees following the date of their termination. Notwithstanding, certain Terminated Employees may have accrued and unused vacation time prior to the Filing Date.[24]

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[21] Sixth Report at para. 76.
[22] Sixth Report at para. 77.
[23] Sixth Report at paras. 78 – 80.
[24] Sixth Report at para. 83.

28. The Compensation Claims Methodology provides for a claim for accrued and unused vacation prior to the Filing Date. The methodology follows the Guiding Documents and does not include unauthorized carry-forward vacation time. To the extent that a Terminated Employee took more vacation days in the period after the Filing Date than were earned in that period, the excess days are proposed to be deducted from the vacation claim.[25]

Salary and Benefit Continuance (including early retirement supplement)

29. The Applicant has a number of agreements in existence with Former Employees pursuant to which the Applicant agreed to provide salary and/or benefit continuance for a period of time. Since the commencement of the CCAA proceedings, these payments have been stayed.

30. The Compensation Claims Methodology provides that Former Employees will be entitled to a salary continuance and/or benefit claim as follows:

(a) **Salary Continuance**: the present value of the remaining salary owing discounted at a rate of 4% until the end of the period stated in the agreement; and

(b) **Benefit Continuance**: the present value of the remaining benefits discounted at a rate of 4% until the end of the period and calculated based on the cost to the Applicant of providing the benefit at the commencement of the period.[26]

31. With respect to both salary and benefit continuance claims, only agreements with a remaining term that is greater than two years will be discounted. Agreements with a term

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[25] Sixth Report at paras. 84 – 85.
[26] Sixth Report at para. 82.

of less than two years will not be discounted. Further, any salary or benefit continuance claim will not include any amount in respect of ongoing pension accrual on and after the Filing Date.[27]

RHBP Claims

32. Since 1998, the Applicant provided the RHBP to individuals that elect to enrol in the program. In addition to employees of the Applicant, the RHBP was available to employees of the Federated Universities, SNOLab, MIRARCO, and CEMI. The Applicant only administered the RHBP for the Third Parties. Any obligations under the RHBP with respect to employees and former employees of each of the Third Parties remained obligations of the respective Third Party.[28]

33. On February 1, 2021, the Applicant ceased processing benefit claims pursuant to the RHBP. In accordance with the LUFA Term Sheet and the LUSU Term Sheet, it was agreed that the RHBP would be terminated. The Applicant terminated the RHBP for all employees of the Applicant and all employees of each of the Third Parties as of April 30, 2021. Any contributions made by participants to the RHBP after December 2020 have been reimbursed to such participants.[29]

34. The Compensation Claims Methodology provides for separate methodologies with respect to: (i) Retirees and Employees of the Applicant, and (ii) Third Parties.

35. In order to be eligible for the RHBP, employees must meet the RHBP Benefit Criteria, which consisted of employees retiring at age 55 or older, contribute to the RHBP for a

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[27] *Ibid*.
[28] Sixth Report at para. 86.
[29] Sixth Report at paras. 97 – 97.

period of at least 15 years, and either provide receipts of private coverage or receipts for medical expenses.[30]

36. With respect to the Retirees and Employees, the Compensation Claims Methodology provides that Retirees (or the surviving spouse of Retirees) who had an entitlement to benefits under the RHBP will have a Compensation Claim calculated as the present value as at April 30, 2021, based on the maximum annual benefit permitted for the Retiree, for either:

(a) If the primary member is still living, the greater of the number of years remaining to age 90 or three years; or

(b) If the primary member is deceased, the remaining benefit term for the surviving spouse being two years from the date of death of the primary member, using a discount rate of 4%.[31]

37. The Compensation Claims Methodology provides that Active Employees who satisfied the RHBP Benefit Criteria as of April 30, 2021, will also be entitled to an RHBP Claim calculated using the same methodology as Retirees. The Compensation Claims Methodology provides that Terminated Employees and Active Employees who did not satisfy the RHBP Benefit Criteria as of April 30, 2021, were not eligible for the benefit and their RHBP Claim will be zero.[32]

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[30] Sixth Report at para. 88.
[31] Sixth Report at para. 98.
[32] Sixth Report at paras. 102 - 104.

38. With respect to the RHBP claim methodology, the Compensation Claims Methodology includes a separate methodology to calculate the Compensation Claims with respect to the RHBP for the Third Parties.[33]

39. Although the Applicant acted as administrator of the RHBP for the Third Parties, the Applicant did not agree to assume any obligation for funding benefits for Third Party Retirees or employees. Funding of the RHBP for Third Parties was to be from contributions made by the Third Parties' employees and the Third Parties. For that reason, the Applicant tracked contributions and benefits paid by each Third Party.[34]

40. The Applicant has provided the Monitor with its summary of contributions and benefits claimed for each Third Party since the inception of the RHBP. The Compensation Claims Methodology provides that each Third Party will have a RHBP Claim based upon:

(a) The net amount of RHBP contributions received by the Applicant from the Third Party and on behalf of the Third Party's employees during the administration of the RHBP, taking into account any contributions refunded by the Applicant to the Third Party;

less

(b) The aggregate amount of RHBP benefits paid to the Third Party retirees or surviving spouses on or prior to the Filing Date.[35]

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[33] Sixth Report at paras. 105 to 107.
[34] Sixth Report at para. 105. See also the RHBP located at Appendix "G" of the Sixth Report.
[35] Sixth Report at para. 106.

41. In respect of claims for future benefits as a result of the termination of the RHBP, to the extent that retirees, employees, or former employees of the Third Parties would have claims against the Applicant, such claims would be offset by an obligation of the Third Party employer to provide contributions or other funding to satisfy those claims.[36]

42. Solely with respect to Huntington University, the Huntington Transition Agreement that was approved by this Court on May 2, 2021, did not alter the structure or ultimate obligations of Huntington to its employees in respect of the RHBP. The Applicant remained the (former) administrator of the RHBP and the Applicant never agreed to assume any liabilities or obligations of Huntington to its employees in respect of the RHBP. Further, the Applicant did not purport to grant a release to Huntington in respect of its obligations under the RHBP.[37]

SuRP Claims

43. The SuRP provides additional retirement benefits to certain employees of the Applicant that participate in the Registered Pension Plan and earn income over certain thresholds set out in the *Income Tax Act*. Retirees who qualified for the SuRP were automatically included in the benefits plan and had the option of receiving either an annual payment for a period of time or a lump sum at the time of retirement. The SuRP is unfunded.[38]

44. Pursuant to the LUFA Term Sheet and the LUSU Term Sheet, the SuRP was terminated as of April 30, 2021.[39]

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[36] Sixth Report at para. 107.
[37] Responding Motion Record of Huntington University dated August 13, 2021, Affidavit of Dr. Kevin McCormick sworn August 13, 2021, Exhibit "A".
[38] Sixth Report at paras. 108 – 109.
[39] Sixth Report at para. 111.

45. The Compensation Claims Methodology provides that Retirees who either were entitled to receive, or are receiving, SuRP benefits are entitled to a SuRP Claim based on the aggregate amount of remaining SuRP payments owing, as determined by Eckler (the Applicant's actuary), applying a discount rate using the interest rate used by Eckler at the time of the initial calculation.[40]

46. The Compensation Claims Methodology provides that Terminated Employees and Active Employees who were or would have been entitled to the SuRP benefit as at April 30, 2021, will be entitled to a SuRP Claim in an amount calculated by Eckler on a lump sum basis based on a settlement date of April 30, 2021. Eckler will use the same methodology used historically to determine whether a Terminated Employee or Active Employee was eligible for a SuRP as of April 30, 2021.[41]

Grievance Awards

47. Pursuant to the LUFA Term Sheet, outstanding grievances were required to be determined by May 31, 2021. The Applicant and LUFA, with the assistance of the Monitor and the mediator/arbitrator William Kaplan, reviewed all Pre-Filing Grievances and each of them have either been resolved or a process has been agreed to for the Pre-Filing Grievances to be determined.[42]

48. In cases where Pre-Filing Grievances have resulted in monetary amounts to be allocated to an individual LUFA member pursuant to either an award or settlement, that individual will receive a Grievance Award Claim in that individual's Compensation Claim.[43]

[40] Sixth Report at para. 112.
[41] Sixth Report at para. 113.
[42] Sixth Report at paras. 116 – 118.
[43] Sixth Report at para. 119.

Section 33 Claims

49. The Compensation Claims Methodology does not provide for any further Compensation Claims as a result of the LUFA Term Sheet and the LUSU Term Sheet, including without limitation: (a) claims by Unions pursuant to section 33 of the CCAA, (b) any concessions provided or amendments to collective agreements negotiated during the CCAA, and (c) any changes to policies or terms of employment of any Active Employees, Terminated Employees, Former Employees, and Retirees.[44]

50. With respect to LUFA, the LUFA CA expired on June 30, 2020. The Applicant and the Monitor are of the view that any changes as a result of the LUFA Term Sheet do not give rise to an additional claim under Section 33 of the CCAA because the LUFA CA had already expired.[45]

51. With respect to LUSU, the LUSU Term Sheet provides for certain amendments to the existing LUSU CA. The Applicant and the Monitor have reviewed these amendments and determined that there are no additional amendments to the LUSU CA that give rise to an additional claim that is not already enumerated in the claims addressed by the Compensation Claims Methodology.[46]

Registered Pension Plan Claims

52. The Compensation Claims Methodology does not provide any Compensation Claims in respect of amendments made to the Registered Pension Plan. The amendments to the Registered Pension Plan had two substantive effects on the Registered Pension Plan: (i) the

[44] Sixth Report at para. 124.
[45] Sixth Report at para. 122.
[46] Sixth Report at para. 123.

removal of the ability for certain members to elect a transfer of commuted value from the Registered Pension Plan after their Early Retirement Date, and (ii) the go-forward calculation of benefits earned under the Registered Pension Plan in the future.[47]

53. Neither of these changes give rise to a claim on behalf of Retirees, Terminated Employees, or Active Employees.

Employment, Professional, or Research Allowance Claims

54. Historically, the Applicant provided certain professional or research allowances to certain faculty members and employees. These allowances are budget items and permit such individuals entitled to the allowance to be reimbursed for certain work-related expenses.[48]

55. The LUFA Term Sheet provided for the elimination of carry-forward, accrued but unused Employment/Professional/Research Allowances as at April 30, 2021, and the permanent elimination of the research budget. This included the elimination of carry-forward allowances for Senior Leaders.[49]

56. These changes do not create an entitlement to a claim for Employees of the Applicant because these are not amounts owing or payable to the individual until such time as the expense is incurred. Since these are discretionary work-related expenses, these amounts do not represent compensation. Further, accrued but unused allowances have not been paid out to Employees who were terminated, retired, or resigned from the Applicant.[50]

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[47] Sixth Report at paras. 126 – 128.
[48] Sixth Report at para. 130.
[49] Sixth Report at para. 131.
[50] Sixth Report at para. 132.

PART III - ISSUES

57. The sole issue that must be determined on this motion is whether this Court should approve the proposed Compensation Claims Process Order, including the Compensation Claims Methodology.

PART IV - LAW AND ANALYSIS

Issue 1: This Court should approve the proposed Compensation Claims Process Order

A. The Court has the Jurisdiction to Approve the Compensation Claims Process Order

58. The Court's general power under section 11 of the CCAA includes the authority to approve a process for the solicitation of claims against a debtor company. This authority is well accepted in CCAA proceedings.[51]

59. The Court's jurisdiction to approve a claims bar date arises from the application of sections 11 and 12 of the CCAA. Section 12 of the CCAA permits the Court to establish deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.[52] This authority has been interpreted to permit this Court with the jurisdiction to establish a bar date in a claims process.[53]

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[51] *ScoZinc Ltd., Re*, 2009 NSSC 136 ("***ScoZinc***") at para. 25.
[52] CCAA, s. 12.
[53] *Toys "R" Us (Canada) Ltd., 2018 ONSC 609 [Commercial List]* at para 8; *Timminco Ltd., Re*, 2014 ONSC 3393 ("***Timminco***") at para. 40.

B. The Compensation Claims Process is Fair and Reasonable

60. Claims processes assist organizations under the protection of the CCAA in determining the universe of claims against the debtor entity for the purposes of, among other things, voting on a Plan and/or determining potential distributions to creditors. A claims process provides certainty for the debtor and its stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.[54]

Negative Claims Process is Appropriate

61. The proposed Compensation Claims Process is a claims process that is colloquially referred to as a "negative" claims process. Instead of requiring Compensation Claimants to file a Proof of Claim, the Monitor (with the assistance of the Applicant) will prepare and send a Statement of Compensation Claim to each known, potential Compensation Claimant.[55]

62. The Applicant submits that a negative claims process is the most appropriate process in the circumstances. Of the approximately 1,200 potential Compensation Claimants, substantially all of the Compensation Claimants consist of Active Employees, Terminated Employees, and Retirees. Requiring each of these potential Compensation Claimants to attempt to determine what claims they may have against the Applicant and calculate the Compensation Claim would place a significant burden on the Compensation Claimants.

63. Most employees are not in a position to accurately value their potential Compensation Claims against the Applicant due to a lack of necessary information, the complexity of the calculations, and that certain claims may require actuarial valuation.[56]

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[54] *Timminco* at para. 32; *ScoZinc* at para. 23.
[55] Sixth Report at para. 39.
[56] Sixth Report at para. 38.

64. The Compensation Claims Methodology is complex and the alternative of requiring Compensation Claimants to determine and calculate their own Compensation Claims would likely lead to a significant number of inconsistencies with respect to the Compensation Claims filed against the Applicant, resulting in a less efficient and more expensive process.

65. The Applicant and the Monitor, in consultation with the Unions, have the best available information and resources to accurately calculate the Compensation Claims for each Compensation Claimant. Accordingly, the Applicant respectfully submits that it is appropriate and in the best interests of the Compensation Claimants that the Compensation Claims Process is a negative claims process.

66. The proposed Compensation Claims Process meets the purpose of claims processes generally, which is "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner".[57]

67. Finally, this Court has approved similar negative claims processes in respect of compensation or employee claims in other CCAA proceedings such as *Nortel*, *Sears Canada*, and *Target Canada*.[58]

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[57] *Canwest Global Communications Corp, (Re)*, 2011 ONSC 2215 at para. 40.

[58] *Nortel Networks Corporation (Re)*, 2012 ONSC 1812; *Sears Canada Inc., Re*, Order of Justice Hainey dated February 22, 2018 (Employee and Retiree Claims Procedure Order); *Target Canada Co., Re*, Order of Justice Morawetz dated October 21, 2015 (Employee Trust Claims Procedure Order).

The Compensation Claims Process Order and Compensation Claims Process Methodology are Fair and Reasonable

68. The Compensation Claims Order and the Compensation Claims Methodology should be granted because, taken as a whole, the Compensation Claims Process is fair, reasonable and appropriately balances the interests of the various stakeholders.

69. The Compensation Claims Process provides equitable treatment to Compensation Claimants and establishes a streamlined process so that the valuation of all Compensation Claims against the Applicant may proceed in an orderly, efficient manner that promotes certainty and fairness to creditors and avoids the cost, delay, and uncertainty of litigation.[59]

70. Further, the Compensation Claims Process allows the Applicant and its stakeholders to overcome another substantial hurdle of quantifying and determining a significant number of claims against the Applicant in order to facilitate the development of a Plan.[60]

71. The Compensation Claims Process Order establishes an efficient and orderly process for the calculation and determination of the numerous employment-related claims against the Applicant. It fairly balances the interests of the Applicant's stakeholders and represents an important step toward the development of a Plan. It has been arrived at in a fair and reasonable way, after consultation and negotiation with several key stakeholders.[61]

72. The Compensation Claims Methodology is based on and informed by the applicable collective agreements, employment contracts, terms and conditions of employment, or internal policies of the Applicant, and on legislation and common law principles, all subject

[59] Sixth Report at paras. 43, 67, and 138.
[60] Sixth Report at para. 37.
[61] Sixth Report at paras. 138 - 140.

to the negotiations that took place with the Unions.[62] The Compensation Claims Methodology is advantageous and contributes to the administration of this proceeding, among other things, by:

(a) fixing a reasonable notice period that can be consistently applied to all Compensation Claims;

(b) establishing a process for persons who believe they have a Compensation Claim to provide notice to the Applicant and the Monitor and participate in the Compensation Claims Process;

(c) adopting consistent assumptions and establishing a uniform methodology for calculating Compensation Claims;

(d) allowing the relevant parties (the Applicant, Monitor, and the Unions) to share information with respect to Compensation Claimants in an attempt to ensure the Compensation Claim Information used to calculate the Compensation Claims is accurate; and

(e) providing for a dispute resolution mechanism in order to correct any inaccuracies and to permit Compensation Claimants to notify the Applicant and the Monitor of any additional Compensation Claims.[63]

73. Although the calculations of Compensation Claims made in accordance with the Compensation Claims Methodology cannot be challenged, the Compensation Claim

[62] Sixth Report at para. 8.
[63] Sixth Report at para. 52.

Information can be disputed and corrected, and the Compensation Claims Process adopts the same dispute resolution process as the Claims Process Order.[64]

74. Further, the Monitor recommends the Compensation Claims Process[65] and played an integral role in its development. The Court, in determining whether the proposed Compensation Claims Process is fair and reasonable, should be guided by the business judgment of its officer, and it will look to the integrity of the process by which the transaction was agreed upon.[66]

75. The Compensation Claims Process is sought with the support of LUFA and LUSU.[67]

76. For all of the foregoing reasons, the Applicant respectfully requests that this Court approve the Compensation Claims Process.

PART V - RELIEF REQUESTED

77. For all of the foregoing reasons, the Applicant requests that this Court grant the Compensation Claims Process Order, located at Tab 2 of the Motion Record of the Applicant dated August 10, 2021.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of August, 2021.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

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[64] *Ibid*.
[65] Sixth Report at para. 142.
[66] *Re Air Canada* (2004), 2004 CanLII 11700 at para. 9.
[67] Sixth Report at para. 135.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *ScoZinc Ltd., Re*, 2009 NSSC 136.

2. *Toys "R" Us (Canada) Ltd.*, 2018 ONSC 609 [Commercial List].

3. *Timminco Ltd., Re*, 2014 ONSC 3393.

4. *Canwest Global Communications Corp, (Re)*, 2011 ONSC 2215.

5. *Nortel Networks Corporation (Re)*, 2012 ONSC 1812.

6. *Sears Canada Inc., Re*, Order of Justice Hainey dated February 22, 2018 (Employee and Retiree Claims Procedure Order).

7. *Target Canada Co., Re*, Order of Justice Morawetz dated October 21, 2015 (Employee Trust Claims Procedure Order).

8. *Re Air Canada* (2004), 2004 CanLII 11700.

SCHEDULE "B"
RELEVANT STATUTES

Companies' Creditors Arrangement Act

Section 11

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.

Section 12

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

SCHEDULE "C"
BLACKLINE OF DEFINITION OF COMPENSATION CLAIMS

~~claims of:~~

~~(A)~~

(i) all claims in respect of the following, which shall be collectively referred to as "**Employee Claims**":

(1) claims of any Employee or Retiree for amounts owing to him or her in his or her capacity as a current or former employee of the Applicant, including without limitation, claims on account of wages, salaries, any other form of compensation (whether sales-based, incentive-based, deferred, retention-based, share-based, or otherwise), ~~severance or~~ termination or severance pay, employee benefits (including, but not limited to, medical and similar benefits, disability benefits, relocation or mobility benefits, and benefits under employee assistance programs), pension and retirement benefits (including the Registered Pension Plan, RHBP and SuRP), vacation pay, and employee expenses~~,~~;

(2) ~~(B)~~claims of any Employee or Retiree arising from the administration, management or oversight of any of the pension plans or employee benefit plans administered or sponsored by the Applicant~~,~~ (including the Registered Pension Plan, RHBP and SuRP); and

~~(C)~~

(3) claims by any Employee or Retiree, or the surviving spouse or other beneficiary of any Employee or Retiree, for other amounts owing to such Person in their capacity as an Employee, as plan member, surviving spouse or other beneficiary of the plan, to the extent not already captured in subparagraphs 2(e)(i)(1) or 2(e)(i)(2) of this Order ("**Other Employee Claims**");

(ii) claims by any Employee or Union (whether on behalf of an Employee or otherwise) in respect of grievances under any collective agreement to which the Applicant is party, whether such grievance arose prior to or after the Filing Date~~,~~ and is in respect of any matter that:

(1) is based in whole or in part on facts existing prior to the Filing Date, related to a time period prior to the Filing Date; or

(2) arises as a result of the restructuring of the Applicant prior to the date of this Order, including for greater certainty any grievance related to the Union Restructuring Agreements

(collectively, "**Grievance Claims**");

(iii) ~~(D) any labour union of the Applicant in respect of~~ claims by any Union arising pursuant to section 33(5) of the CCAA~~,~~ (“**Union Claims**”); and

(iv) ~~(E)~~claims by Huntington University, University of Sudbury, Thorneloe University, the Sudbury Neutrino Observatory Laboratory, the Mining Innovation Rehabilitation and Applied Research Corporation or the Centre for Excellence in Mining Innovation, or any current or former employee of any of the foregoing entities, in each case solely in respect of any claims relating to the participation of their current or former employees in the RHBP (~~collectively, including Employee and Employee grievance claims of the above nature, "~~“**Third Party RHBP Claims**”).

For greater certainty, Compensation Claims~~")~~ shall not include any D&O Claims as such term is defined in the Claims Process Order;

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**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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