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 ARRANGEMENTOF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

SUPPLEMENTAL FACTUM OF THE APPLICANT

April 7, 2022

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PART I - OVERVIEW[1]

1. This Supplemental Factum of the Applicant addresses the new bases for relief added to the Claimant's Fresh as Amended Notice of Motion, served April 4, 2022, as well as the relief sought by USudbury in its motion served April 5, 2022. The arguments contained herein supplement those already included in the Factum of the Applicant dated March 31, 2022.

2. Both the Claimant and the University of Sudbury ("**USudbury**" and, together with the Claimant, the "**Movants**") seek an order lifting the stay of proceedings imposed by the Initial Order to allow them to pursue claims against Laurentian in litigation in the Ontario Superior Court. The relief sought by the Movants is premised on an argument that Section 19(2) of the CCAA exempts the Claimant from having her Claim determined in the Claims Process. The Movants allege that the effect of Section 19(2) is that the Claimant should be free to litigate her Claim in the ordinary course, outside of the CCAA proceeding.

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[1] Capitalized terms used in this Supplemental Factum of the Applicant and not defined shall have the meaning ascribed to them in the Factum of the Applicant dated March 31, 2022 ("**Laurentian's Factum**").

3. That assertion is incorrect. The Movants fundamentally misunderstand the purpose and effect of Section 19(2) of the CCAA. In short, the Movants' argument conflates two separate issues: (i) the terms and conditions upon which certain types of proven claims may be compromised under a Plan of Arrangement, and (ii) whether a claim asserting an as-yet-unproven liability of such type can be determined in the CCAA Claims Process. Section 19(2) addresses the former, but it does not affect the latter.

4. Section 19 of the CCAA is titled: "Claims that may be dealt with by a compromise or arrangement" and refers to claims that relate to debts or liabilities, present or future. Section 19(2) identifies certain categories of claims that may not be dealt with in a Plan of Arrangement, <u>unless</u> the compromise or arrangement explicitly provides for the claim's compromise and the creditor has voted for the acceptance of the compromise or arrangement. Put simply, Section 19(2) deals with how certain claims may be dealt with <u>in a Plan</u>, and provides that such claims cannot be "crammed down" by the votes of other creditors.

5. What Section 19(2) does <u>not</u> do, on the other hand, is provide that particular claims are exempt from determination in the Claims Process or that creditors who may wish to assert such claims are free to pursue the determination of their claims in ordinary litigation outside of the CCAA process. Indeed, the very reference in Section 19(2) to the claimant's vote on a Plan of Arrangement <u>presupposes</u> that its claim has been proven and accepted within the claims process.

6. The very narrow issue on this motion relates to how the Claimant's Claim is to be <u>determined</u>. Whether and in what circumstances that Claim, if proven, can ultimately be

compromised under a Plan is a separate issue and is not before this Court. The issue of how the Claim may be treated in a Plan only requires determination if the Claimant establishes a valid Claim against Laurentian, which she has not yet done.

7. The Claimant's Claim is properly determined in the CCAA Claims Process. The Claimant has already filed her claim in accordance with the Claims Process Order, it has been reviewed and disallowed by the Monitor, a Dispute Notice has been filed by the Claimant and it is pending before a Claims Officer who is ready to have it determined. That is the coordinated, singular process that the Court established in the Claims Process Order and there is no reason to deviate from it here. Allowing litigation claimants like the Movants to pursue their claims outside of the CCAA Claims Process would invite exactly the type of chaos that a stay of proceedings and a coordinated Claims Process is meant to avoid. That is particularly the case when the Claim has been subject to a determination that the Claimant does not like.

8. Contrary to the Movants' suggestions, there is no reason their claims cannot be determined in the CCAA Claims Process. That is precisely what the process is designed to do, and it is the most efficient and fair way for all creditors' claims to be determined.

9. Laurentian respectfully submits that the Movants' requested relief should be denied.

PART II - FACTS

The Claimant's Lift Stay Motion

10. The factual background to the Claimant's Lift Stay Motion is described in Laurentian's Factum and is incorporated by reference here.

11. On April 4, 2022, the Claimant served a Fresh as Amended Notice of Motion, amending the relief sought on the Lift Stay Motion.[2]

12. The Claimant now seeks an order, on the basis of s. 19(2)(b)(i) of the CCAA, lifting the stay of proceedings imposed by the Initial Order to add Laurentian as a defendant to the USudbury Action.[3]

13. As alternative relief, the Claimant seeks to lift the stay of proceedings imposed by the Initial Order to add Laurentian as a defendant to the USudbury Action with recovery on any judgment obtained to be limited to "such insurance proceeds (if any) as are determined to be available to [Laurentian]", with no ability to recover "as against [Laurentian's] current or future assets". As part of this alternative relief, the Claimant also seeks an order allowing her to cross-examine Mr. Coutu and Mr. Lavallee by way of written questions, and permission to make an application for a declaration that Laurentian has insurance coverage.[4]

The USudbury Lift Stay Motion

14. On April 5, 2022, USudbury served a motion (the "**USudbury Lift Stay Motion**") seeking to lift the stay of proceedings imposed by the Initial Order to either crossclaim against Laurentian if the Court grants the Claimant's Lift Stay Motion, or to add Laurentian as a

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[2] Fresh as Amended Notice of Motion, dated April 4, 2022, Amended Motion Record of Barbara Jean Robinson, Tab 1.

[3] Ibid. at para. 1.

[4] Ibid. at para. 3.

third party to the USudbury Action if the Court does not grant the Claimant's Lift Stay Motion.[5]

15. In the alternative, USudbury seeks an order that Laurentian engage in: (i) full documentary production, and (ii) examinations for discovery in the USudbury Action, as if it were a defendant or third party to the USudbury Action.[6]

PART III - THE ISSUES

16. The Claimant's Lift Stay Motion and the USudbury Lift Stay Motion raise a common issue to be determined: does Section 19(2) of the CCAA provide a basis for the Court to lift the stay of proceedings imposed by the Initial Order and allow Laurentian to be added as a defendant or third-party defendant to the USudbury Action?

17. USudbury's Lift Stay Motion raises the issue of whether Laurentian should be compelled to provide full documentary disclosure and to be examined for discovery in the USudbury Action, as if it were a defendant or third party to the USudbury Action.

18. Laurentian states that the answer to both questions is "no".

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[5] Notice of Motion, dated April 5, 2022, Motion Record of University of Sudbury, Tab 1, at para. 1.

[6] Ibid. at para. 2.

PART IV - THE LAW AND ANALYSIS

A. Section 19(2) of the CCAA Does Not Provide a Basis to Lift the Stay of Proceedings

19. The Movants contend that Section 19(2)(b)(i) of the CCAA provides a basis to lift the stay of proceedings and allow the Claimant's Claim, and USudbury's proposed Crossclaim against Laurentian, to proceed in ordinary litigation outside of the Claims Process. The Movants argue that Section 19(2) of the CCAA provides "exceptions" to the claims that are to be addressed in the Claims Process, and that the Claimant's Claim falls within this "exception". [7]

20. Section 19(2)(b)(i) of the CCAA states:

> 19 (2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:
>
> …
>
> (b) any award of damages by a court in civil proceedings in respect of
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> (i) bodily harm intentionally inflicted, or sexual assault…[8]

21. As discussed further below, the Movants fundamentally misunderstand Section 19(2) of the CCAA and it is incorrect to suggest that it provides a basis to lift the stay with respect

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[7] Factum of Barbara Jean Robinson at para. 8; Factum of University of Sudbury at para. 17.

[8] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") at s. 19(2) (emphasis added).

to the Claimant's Claim. First, Section 19(2)(b)(i) does not provide an "exception" to the Claims Process and thus does not provide a basis to lift the stay of proceedings. Second, even if that Section did provide an exception to the Claims Process – which it does not – the Claimant's Claim does not fall within the bounds of Section 19(2)(b)(i) and thus the Section is inapplicable.

i. Section 19(2)(b)(i) Does Not Provide an "Exception" to the Claims Process

22. The Movants argue that the stay of proceedings should be lifted because Section 19(2) provides for "exceptions" for claims that are not to be determined in the Claims Process. That argument misreads the plain text, purpose, and effect of the section.

23. The governing approach to statutory interpretation in Canada is the "modern principle" of statutory interpretation adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27:

> "The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously within the scheme of the Act, the object of the Act and the intention of Parliament."[9]

24. As the Court of Appeal has stated, "[t]he core teaching of the 'modern principle' is that the statutory language must always be interpreted purposively and in context."[10] The words of the text "must be read and analyzed in light of a purposive analysis, a scheme analysis,

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[9] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.

[10] *Oakville (Town) v. Clublink Corporation ULC*, 2019 ONCA 826 at para. 38.

the larger context in which the legislation was written and operates, and the intention of the legislature…"[11]

25. The purposive approach requires the judge "to first consider the ordinary meaning of the word or words being interpreted; next the context in which the words are found and the purpose of the legislation; and then, whether the proposed interpretation produced a just and reasonable result".[12]

26. The ordinary meaning of Section 19 of the CCAA is clear. The Section is titled "Claims that may be dealt with by a compromise or arrangement". It is not entitled "Claims that may be determined in a CCAA claims process." Section 19(2) specifies certain categories of claims that cannot be dealt with in a compromise or arrangement, unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement.

27. In other words, Section 19(2) addresses how certain claims, once proven and accepted in the Claims Process, may then be dealt with in a compromise or arrangement.

28. Contrary to the Movants' assertions, Section 19(2) explicitly does not address how the liability or quantum of any claim is to be determined, much less provide any claims with an "exception" to participating in the Claims Process.

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[11] Ibid.

[12] *Wilk v. Arbour*, 2017 ONCA 21 at para. 20.

29. At the current stage, Section 19(2) does not come into play because the Claimant does not have a proven Claim that might be considered in a compromise or arrangement. The Claimant has only filed a Proof of Claim that has been disallowed by the Monitor, in respect of which a Dispute Notice has been filed, and the Claimant's dispute of that disallowance is now pending before a Claims Officer. If, through the Claims Process, it is ultimately determined that the Claimant has a valid claim against Laurentian for some amount, then Section 19(2) may be relevant to how that Claim can be dealt with in a Plan. But the Claim is not yet at that stage.

30. The only forum for the Claimant's Claim to be determined is through the Claims Process Order issued ten months ago. The Claims Process Order requires that "all Proofs of Claim" with respect to pre-filing claims against Laurentian be filed by the specified Claims Bar Date and that a failure to participate in that process means a creditor is "forever barred from making or enforcing" their claim against Laurentian.[13] The Claims Process Order and the December 20, 2021 Order appointing three Claims Officers for the proceeding (the "**Claims Officer Order**") provide direction on the process and procedure for determination of all filed claims against Laurentian within the CCAA Claims Process.[14]

31. Like all CCAA proceedings, having a coordinated, singular process for dealing with all claims in the Claims Process is critical in this proceeding. That is consistent with the

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[13] Amended and Restated Claims Process Order, dated May 31, 2021, Motion Record of University of Sudbury at Tab 2, Exhibit "A" at para. 9-10.

[14] Ibid. at paras. 30-39; Order Appointing Claims Officers, dated December 20, 2021, Applicant's Supplemental Responding Motion Record at Tab 1, Exhibit "A" at paras. 3-6.

overall purpose of the CCAA statutory scheme. The Supreme Court of Canada has recognized that an orderly claims process is at the heart of the CCAA model:

> "[The CCAA provides] a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors' remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize the debtor's assets, they will be beat out by other creditors."[15]

32. Laurentian's interpretation of Section 19(2) is consistent with both the ordinary meaning and the overall statutory purpose of the CCAA. Conversely, the Movants' reading of Section 19(2) would directly conflict with the CCAA's single proceeding model. It would mean that any claim of the types mentioned in Section 19(2) – which is a broad category of claims including fraud, misappropriation, and misrepresentation – would not be capable of being determined in a CCAA claims process and could proceed in ordinary litigation. In short, it would create chaos. That is precisely what the Supreme Court of Canada stated the CCAA was designed to prevent when it said that "[t]he single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor initiated proceedings to recover its debt."[16]

33. In support of their position that the stay should be lifted, the Movants refer to certain case law decided in the context of Section 178 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"). However, notwithstanding that there are many similarities

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[15] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 22.

[16] Ibid. at para. 22.

between Section 178 of the BIA and Section 19(2) of the CCAA, there is a critical distinction. Section 178 states that "an order of discharge does not release the bankrupt from" any of the types of claims listed, including sexual assault.[17] Section 19(2), on the other hand, states that the claims listed (including damages awarded in respect of sexual assault) cannot be compromised unless the Plan explicitly provides for the claim's compromise and the creditor has voted for acceptance of the compromise.[18]

34. In other words, while Section 178 definitively provides that the listed claims cannot be discharged under any circumstances, Section 19(2) contemplates a scenario where the claims may be compromised if certain preconditions are met. That necessarily suggests that the claims listed in Section 19(2) would need to be determined within the claims process. From a timing perspective, in order to have the claim dealt with in a Plan (should the preconditions be met), as contemplated by Section 19(2), it would be necessary to have the claim determined in the claims process. In addition, in order for there to be any circumstances in which such creditor had an opportunity to vote on the Plan, their claim would have to have been filed and accepted as a proven claim for voting purposes. Any other interpretation would render meaningless the explicit reference to such creditor's vote on the Plan.

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[17] BIA at s. 178(1).

[18] CCAA at s. 19(2).

35. For all of the reasons detailed above, Laurentian respectfully submits that Section 19(2) of the CCAA does not provide an exemption to a claim being determined in the Claims Process, nor does it support a request to lift the stay of proceedings.

ii. Section 19(2)(b)(i) Does Not Apply to the Claimant's Claim

36. Even if Section 19(2)(b)(i) was found to provide a basis for lifting the stay, that would not help the Movants because that section of the CCAA plainly does not apply to the Claimant's Claim.

37. Section 19(2)(b)(i) of the CCAA, by its express terms, applies to claims for "*any award of damages by a court in civil proceedings* in respect of…sexual assault".

38. The Claimant has not asserted a Claim based on "an award of damages by a court in civil proceedings". Nor could she. There have been no civil proceedings in respect of the Claim in the past 43 years, much less an award of damages by a court. The Claimant has only filed a Proof of Claim in the Claims Process that attaches an unissued, unproven Statement of Claim. A plain reading of Section 19(2)(b)(i) makes clear that the Section is not engaged by this Claim: there has been no award of damages by a court in civil proceedings.

39. Parliament made a deliberate choice when it limited this exception to claims for an "award of damages by a court in civil proceedings". Indeed, Section 19(2)(b) is the <u>only</u> place in Section 19(2) that uses that specific qualifying language flowing from the reference in the lead-in language to "the following debts or liabilities…". As a matter of statutory interpretation, that wording choice must be given meaning. The Claimant's Claim does not fall within Section 19(2)(b)(i).

40. Finally, it should also be noted that significant parts of the Claimant's Claim are claims for negligence and breach of duty, neither of which would be covered by the Movants' arguments in respect of Section 19(2) in any event.[19]

iii. The Claim Can Be Determined in the CCAA Claims Process

41. USudbury argues that the Claimant's Claim cannot be determined within the CCAA Claims Process because it requires findings of liability and determination of the quantum of any liability. USudbury claims that these determinations can only be made with the benefit of discovery and *viva voce* evidence because there will be important determinations of credibility required.[20] USudbury alleges that "it is clear from the CCAA and the Claims Process Order that the evaluation process does not address these issues in any meaningful way", purportedly because "*viva voce* evidence is usually unavailable to the Monitor and/or Claims Officer".[21]

42. USudbury is incorrect in that assertion. It is routine in CCAA Claims Processes for the Monitor and/or a Claims Officer to make determinations as to liability and the quantum of any liability. That is precisely their function in a Claims Process.

43. In addition, the Court's Order Appointing Claims Officers, dated December 20, 2021 gives the Claims Officers broad discretion to determine the process and procedure for the adjudication of any disputed Claims:

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[19] Draft Statement of Claim of Barbara Jean Robinson, Applicant's Supplemental Responding Motion Record at Tab 1, Exhibit "D" at paras. 19-21, 30-35.

[20] Factum of University of Sudbury at paras. 60-66.

[21] Factum of University of Sudbury at para. 66.

> **5. THIS COURT ORDERS** that the Claims Officers shall be at liberty, in consultation with the relevant parties and the Monitor, to determine the procedure for the adjudication of any disputed Claims (as referred to in paragraph 37 of the Claims Process Order) and any Claims Officer hearings shall be conducted as determined by the applicable Claims Officer, which may include a hearing by written submission only or video conference.[22]

44. Accordingly, to the extent that extensive discovery or *viva voce* evidence is required to determine the Claimant's Claim (which is not conceded here), the Claims Officer has the authority to order that procedure. The arguments raised by USudbury on this motion are more appropriately raised before the Claims Officer. They are not a basis for lifting the stay or requiring that the Claim be determined outside of the Claims Process.

45. Complex litigation claims are regularly determined within a CCAA Claims Process.[23] Indeed, many of the claims filed in this Claims Process are highly complex and require factual and legal determinations that are just as (if not significantly more) complex than what is required in the Claimant's Claim. The Claimant's Claim should be treated no differently.

iv. There is No Basis to Lift the Stay for USudbury's Crossclaim

46. Separate and apart from whether the stay should be lifted to allow the Claimant to proceed in litigation outside of the CCAA proceeding, USudbury also seeks to lift the stay to proceed with a crossclaim or third party claim against Laurentian. None of the purported

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[22] Order Appointing Claims Officers, dated December 20, 2021, Applicant's Supplemental Responding Motion Record at Tab 1, Exhibit "A" at para. 5.

[23] *See, e.g.* *Muscletech Research & Development Inc. Re*, 2007 CanLII 5146 (ON SC) (Claims process used to determine liability and quantum of liability in high volume of personal injury and product liability claims).

arguments for allowing the Claimant to lift the stay apply to USudbury's request, and USudbury has not offered any separate rationale that would justify lifting the stay for its crossclaim or third party claim.

47. As with the imposition of a stay, the lifting of a stay is discretionary.[24] A party applying to lift the stay of proceedings faces a very heavy onus.[25] In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience and the relative prejudice to the parties.[26]

48. USudbury has plainly not satisfied the "heavy onus" required to lift the stay. USudbury's proposed crossclaim or third party claim is an ordinary litigation claim that can, and should, be dealt with in the Claims Process. To the extent USudbury believes it has an additional claim against Laurentian related to the USudbury Action, USudbury could seek to amend the Proof of Claim it has already filed in the Claims Process.

49. The CCAA is meant to level the playing field and create a pause among all stakeholders. Allowing USudbury – one of Laurentian's hundreds of unsecured creditors – to proceed while other claims are stayed, will unfairly advantage USudbury to the detriment of Laurentian's other creditors and stakeholders. The CCAA stay is designed to prevent one

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[24] *Canwest Global Communications Corp. (Re)*, 2009 CanLII 70508 (ON SC) at para. 32.

[25] Ibid.

[26] Ibid.

creditor from seeking to pursue its claims ahead of other claimants. USudbury's request to lift the stay should be denied.

B. USudbury's Request for Full Discovery Rights Against Laurentian Should Be Denied

50. USudbury seeks, as alternative relief, an order requiring that Laurentian engage in (i) full documentary production and (ii) examinations for discovery, all in respect of Ms. Robinson's claim for sexual assault, as if it were a defendant or third party to the USudbury Action.

51. Courts have confirmed that the scope of the stay granted upon the commencement of CCAA proceedings should be broadly interpreted, and restrains both judicial or extra-judicial conduct that could impair a CCAA debtor's ability to focus its efforts on negotiating and presenting a plan of compromise and arrangement to its creditors.[27] As stated in *Wabush Iron Co. v. Royal Bank of Canada*: [28]

> The purpose of the stay of proceedings is to promote the reorganization and restructuring of the debtor by maintaining the *status quo*, giving the debtor some breathing room, protecting the debtor from the claims of the creditors and preserving the debtor's assets for the benefit of all of the creditors and other stakeholders. It prevents an aggressive creditor from obtaining an advantage over other creditors during the restructuring process, and allows for all claims to be determined in summary fashion through the claims procedure under the CCAA.

52. The alternative relief requested by the USudbury would require that the stay be lifted and Laurentian be ordered to provide full documentary production and participate in

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[27] *Nortel Networks Corp. (Re),* 2010 ONSC 1304, paras. 36-39.

[28] 2016 QCCS 6061, 2016 CarswellQue 11725 [*Wabush*]

examinations for discovery with respect to the USudbury Action. If granted, such an order would require Laurentian to invest significant time and resources in responding to requests for documentary production and attending examinations for discovery in connection with the USudbury Action, for the benefit the USudbury and to the detriment of Laurentian's other creditors. This relief should not be granted as it is contrary to the purpose of the stay of proceedings and the well-accepted principle that "the restructuring process in the general interest of all the creditors should always be preferred over the particular interests of individual creditors."[29]

53. The CCAA is a remedial statute whose purpose is to permit a debtor company to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets.[30] Certainty, finality and fairness are the recognized goals of the CCAA.[31] Creditors who participate in CCAA proceedings want to know that the process is fair and that the claims of creditors will be addressed appropriately in the CCAA process.

54. Laurentian is negotiating a Plan of Arrangement in order to seek a Meeting Order by May 31, 2022. The determination of the Claimant's Claim is important as part of that process and timeline.

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[29] *Re Boutiques San Francisco Inc.*, 2004 CanLII 16649 (Que. S.C.).

[30] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 15.

[31] *Kerr Interior Systems Ltd. (Re),* 2011 ABQB 214 at para. 51.

C. <u>The Stay Should Not Be Lifted to Proceed Against Insurance Proceeds Because None Have Been Located</u>

55. For all of the reasons previously discussed in Laurentian's Factum, the Claimant's request to lift the stay to proceed against available insurance proceeds should be denied because, among other things, no such insurance proceeds or policies have been located.

56. As described in Laurentian's Factum, Laurentian has undertaken an extensive search to locate an applicable insurance policy but those efforts have been unsuccessful. In an effort to ensure that all potential avenues to locate a policy are exhausted, even where the likelihood of success is remote, Laurentian's counsel has reached out to certain insurers that are identified on a 1975 working paper and appear to have provided insurance to Laurentian in the 1974-75 period[32] to see if those insurers have records available from 1979.[33] It is unknown whether any of the insurers provided insurance to Laurentian in 1979, and in particular whether they provided a general liability policy to Laurentian. Most of the insurers on the 1975 working paper have gone through various name changes, amalgamations, and policy liability transfers since the 1970s, and it is unknown what records from the relevant time may still be available, if any. Nevertheless, to ensure that

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[32] Laurentian University of Sudbury Prepaid Insurance Working Paper, Applicant's Supplemental Responding Motion Record at Tab 1, Exhibit "B".

[33] Most of the insurers identified on the 1975 working paper appear to have undergone name changes, amalgamations, and/or policy liability transfers. Laurentian's counsel reached out to those insurers that appear to be the currently-operating insurer entities subsequent to the name changes, amalgamations, and/or policy liability transfers.

every possible avenue for locating an insurance policy is explored, no matter how remote, Laurentian has reached out to these entities.[34]

57. At present, however, the fact remains that Laurentian has not identified any insurance policy that would respond to the Claimant's Claim. In the circumstances, the Claimant's requested relief – to lift the stay, with any judgment recoverable only against insurance proceeds – should be denied.

PART V - RELIEF REQUESTED

58. For all of the foregoing reasons, the Applicant respectfully submits that the relief sought by the Movants should be denied. However, to the extent the Court is inclined to grant the Lift Stay Motion, the Applicant respectfully requests that it conform with the requirements raised in Laurentian's Factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2022.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

[34] Emails from A. Hanrahan to insurers, dated April 6, 2022, Applicant's Supplemental Responding Motion Record at Tab 1, Exhibit "C".

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27
2. *Oakville (Town) v. Clublink Corporation ULC*, 2019 ONCA 826
3. *Wilk v. Arbour*, 2017 ONCA 21
4. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
5. *Muscletech Research & Development Inc. Re*, 2007 CanLII 5146 (ON SC)
6. *Canadian Red Cross Society, Re*, 2000 CanLII 22488 (ON SC)
7. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 70508 (ON SC)
8. *Nortel Networks Corp. (Re),* 2010 ONSC 1304
9. *Wabush Iron Co. v. Royal Bank of Canada* , 2016 QCCS 6061, 2016 CarswellQue 11725
10. *Re Boutiques San Francisco Inc.*, 2004 CanLII 16649 (Que. S.C.)
11. *Kerr Interior Systems Ltd. (Re),* 2011 ABQB 214

SCHEDULE "B" – RELEVANT STATUTES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Debts not released by order of discharge

178 (1) An order of discharge does not release the bankrupt from

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

- **(a.1)** any award of damages by a court in civil proceedings in respect of
  - **(i)** bodily harm intentionally inflicted, or sexual assault, or
  - **(ii)** wrongful death resulting therefrom;

(b) any debt or liability for alimony or alimentary pension;

(c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

(g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred

- **(i)** before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
- **(ii)** within seven years after the date on which the bankrupt ceased to be a full- or part-time student;

(g.1) any debt or obligation in respect of a loan made under the *Apprentice Loans Act* where the date of bankruptcy of the bankrupt occurred

- **(i)** before the date on which the bankrupt ceased, under that Act, to be an eligible apprentice within the meaning of that Act, or

  (ii) within seven years after the date on which the bankrupt ceased to be an eligible apprentice; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g.1).

Court may order non-application of subsection (1)

(1.1) At any time after five years after the day on which a bankrupt who has a debt referred to in paragraph (1)(g) or (g.1) ceases to be a full- or part-time student or an eligible apprentice, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

- **(ii)** if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

- **(a)** any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;
- **(b)** any award of damages by a court in civil proceedings in respect of
  - **(i)** bodily harm intentionally inflicted, or sexual assault, or
  - **(ii)** wrongful death resulting from an act referred to in subparagraph (i);
- **(c)** any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;
- **(d)** any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

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
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