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

FACTUM OF THE APPLICANT
(Meeting Order)

July 26, 2022

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PART I - OVERVIEW

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). In granting the Initial Order and the Amended and Restated Initial Order at the Comeback Hearing on February 11, 2021, on the basis of an extensive record before it, the Court found, *inter alia*, that:

(a) LU was a "debtor company" to which the CCAA applies;[1]

(b) LU was "plainly insolvent and faces a severe liquidity crisis";[2]

(c) absent additional financing, LU would be unable to meet payroll at the end of February 2021;[3]

(d) the crisis was "real and immediate";[4] and

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[1] *Laurentian University of Sudbury, Re*, 2021 ONSC 659 (the "**February 1 Endorsement**") at para. 34.
[2] February 1 Endorsement at para. 33.
[3] *Laurentian University of Sudbury, Re*, 2021 ONSC 1098 (the "**February 12 Endorsement**") at para. 73.
[4] *Laurentian University of Sudbury, Re*, 2021 ONSC 1453 at para. 18.

(e) with the approval of the interim financing, LU would have liquidity for the duration of the Stay Period.[5]

2. During the CCAA proceeding, the Stay Period has been extended from time to time and, on May 30, 2022, the Stay Period was extended to September 30, 2022.

3. Over the last several months, LU and the Monitor have been engaged in discussions and negotiations with certain key stakeholders of LU in respect of the development of terms of the Plan (as defined below). While those conversations were ongoing, on May 6, 2022, in response to LU's request for additional financial support in order to present a Plan to its creditors and successfully emerge from the CCAA proceeding, counsel for MCU delivered a letter to LU's counsel and the Monitor's counsel that outlined the terms of further financial support to be made available (the "**Plan Support Letter**").

4. The terms of the Plan Support Letter have subsequently been reflected in the Plan that LU has developed. In addition, LU has continued conversations with MCU and solicited feedback from certain other key stakeholders with respect to the Plan. At this time, LU is in a position to file its Plan with the Court.

5. LU now seeks an Order (the "**Meeting Order**"): (a) accepting the filing of its Plan of Compromise and Arrangement dated July 21, 2022 (as may be amended, the "**Plan**"); (b) authorizing one class of unsecured creditors for the purpose of considering and voting on the Plan; (c) authorizing LU to call, hold and conduct a virtual meeting of Affected Creditors (the "**Meeting**"); (d) establishing certain rules and procedures to be followed in

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[5] February 12 Endorsement at para. 59.

connection with the Meeting; and (e) setting the date for the hearing of LU's motion seeking this Court's approval of the Plan, if the Plan is approved.

6. The Meeting Order represents the culmination of months of negotiations among key stakeholders in this restructuring, and is a critical step forward in LU's exit from these proceedings for the benefit of its stakeholders, including students, faculty and staff and the broader community.

7. The Meeting Order does not seek the Court's approval of the Plan. If the Plan is approved by creditors at the Meeting, Court approval of the Plan will be sought by LU at the Sanction Hearing – scheduled for October 5, 2022.

PART II - FACTS

8. The relevant facts with respect to this motion are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn July 21, 2022 (the "**Haché Affidavit**").

9. All terms not otherwise defined herein have the meanings given to them in the Plan or the Meeting Order.

A. Background

10. On February 1, 2021, Chief Justice Morawetz granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as Monitor (the "**Monitor**") of the

Applicant in this proceeding, approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and granted certain Court-ordered super-priority charges.[6]

11. On February 11, 2021, the amended and restated initial order (the "**Amended and Restated Initial Order**") was granted which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**"). This amount was subsequently increased to $35 million.[7]

12. The Stay Period has since been extended by several Court Orders and is currently set to expire on September 30, 2022.[8]

13. The Applicant, with the assistance of the Monitor, has been engaged in negotiations with LU's key creditor groups to develop the terms of the Plan.[9]

14. The terms of the Plan incorporate the Plan Support Letter. Subject to all the required approvals and conditions, the Plan Support Letter indicates that the DIP Facility will be replaced by a long-term loan, subject to terms and conditions to be negotiated and agreed between LU and MCU, and that the Province of Ontario (the "**Province**") will purchase real estate assets from LU for aggregate proceeds of up to $53.5 million (net of transaction costs). The net proceeds from the sale of the real estate assets will be paid into the Distribution Pool and made available by LU to satisfy the claims of LU's creditors.[10]

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[6] Haché Affidavit at para. 4, Tab 2 of the Motion Record of the Applicant dated July 21, 2022 (the "**Motion Record**"), CaseLines# A8006. All references to CaseLines numbers in this Factum are to the Master number.
[7] Haché Affidavit at para. 6, Tab 2 of the Motion Record, CaseLines# A8007.
[8] Haché Affidavit at para. 8, Tab 2 of the Motion Record, CaseLines# A8007.
[9] Haché Affidavit at para. 9, Tab 2 of the Motion Record, CaseLines# A8007; Fourteenth Report of the Monitor dated July 22, 2022 (the "**Fourteenth Report**") at para. 41, CaseLines# E1572.
[10] Haché Affidavit at paras. 10-12, Tab 2 of the Motion Record, CaseLines# A8008.

15. As the Plan Support Letter is intended to support LU's Plan and its financial sustainability, LU anticipates that the terms of the sale of the real estate assets will allow LU to continue to use and occupy the real estate, land, or buildings. [11]

B. The Plan

16. The purpose of the Plan is to: (a) complete a restructuring of the Applicant to provide LU with an opportunity to continue to operate a bilingual and tri-cultural university in the City of Sudbury, (b) provide for the compromise of all Affected Claims by providing to Affected Creditors with Proven Claims a distribution in accordance with the terms of the Plan, (c) effect a release and discharge of all Affected Claims, Released Claims, and the Huntington Released Claims, (d) provide a basis whereby LU and its operations continue as a going concern after addressing the underlying issues leading to the CCAA filing, and (e) permit LU to exit the CCAA proceeding.[12]

17. The salient features of the Plan include:

(a) continuing obligations on LU after the Plan Implementation Date to:

(i) take certain steps to address operational issues identified in the Nous Operational Report, in consultation with key university stakeholders, including the labour groups at LU;[13]

(ii) submit a request to MCU (jointly with LUFA and LUSU, to the extent applicable) to amend the *The Laurentian University of Sudbury Act, 1960*

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[11] Haché Affidavit at para. 13, Tab 2 of the Motion Record, CaseLines# A8008.
[12] Haché Affidavit at para. 14, Tab 2 of the Motion Record, CaseLines# A8009; Fourteenth Report at para. 42, CaseLines# E1572.
[13] Section 4.2(a)-(c) of the Plan, Tab 3A of the Motion Record, CaseLines# A8077.

to provide representation for members of LUFA and LUSU on the Board of Governors;[14]

(iii) develop a new strategic plan for LU;[15] and

(iv) ensure there are internal financial controls and restrictions for the proper management of restricted funds that are received by LU;[16]

(b) one class of Affected Creditors who will consider and vote on the Plan;[17]

(c) not affecting certain types of claims against LU, including (among others):

(i) CCAA Priority Claims;

(ii) Vacation Pay Compensation Claims;

(iii) Insured Claims;

(iv) Excluded D&O Claims; and

(v) Secured Claims;[18]

(d) providing for the repayment in full upon implementation of the Plan of all amounts to holders of CCAA Priority Claims, Secured Claims, and Vacation Pay Compensation Claims;[19]

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[14] Section 4.2(e) of the Plan, Tab 3A of the Motion Record, CaseLines# A8078.
[15] Section 4.2(g) of the Plan, Tab 3A of the Motion Record, CaseLines# A8078.
[16] Section 4.2(h) of the Plan, Tab 3A of the Motion Record, CaseLines# A8078-8079.
[17] Section 3.2 of the Plan, Tab 3A of the Motion Record, CaseLines# A8074.
[18] Section 2.3 of the Plan, Tab 3A of the Motion Record, CaseLines# A8073.
[19] Sections 7.3-7.5 of the Plan, Tab 3A of the Motion Record, CaseLines# A8082-8083.

(e) providing for a *pro rata* distribution of the Distribution Pool remaining after the payments made in paragraph 17(d) above1(c), including any reimbursement for amounts funded into the Distribution Pool by LU;[20]

(f) a Guaranteed Minimum Plan Consideration Amount of $45.5 million, which will be realized through the sale of the Designated Real Estate Assets by LU to the Province within four (4) years of the Plan Implementation Date, failing which there will be a Plan Default. If the Plan Default is not cured during the cure period, the Monitor will file with the Court and serve on the Service List a certificate confirming that a Plan Default is continuing, and the Plan is terminated (the "**Plan Default Certificate**"). Upon the Monitor filing the Plan Default Certificate with the Court, each Affected Creditor with a Proven Claim under the Plan will have their claim reinstated against LU in an amount equal to their Proven Claim, less any distributions received under the Plan;[21]

(g) a broad and comprehensive release and injunction of claims that may be asserted against any of the Released Parties as of the Effective Date, save and except for a carve out of Non-Released Claims;[22] and

(h) a limited third-party release in favour of Huntington University regarding any claims that may be made against Huntington in respect of the discontinuance of the RHBP or the discontinuance of any academic programs or courses by Huntington.[23]

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[20] Section 7.6 of the Plan, Tab 3A of the Motion Record, CaseLines# A8083.
[21] Section 5.4 of the Plan, Tab 3A of the Motion Record, CaseLines# A8080-8081.
[22] Section 8.1 of the Plan, Tab 3A of the Motion Record, CaseLines# A8086.
[23] Section 8.3 of the Plan, Tab 3A of the Motion Record, CaseLines# A8086. This provision of the Plan is in accordance with section 10.1(1)(b)-(c) of the Huntington Transition Agreement, which can be found at Exhibit "Q" to the Affidavit of Dr. Robert Haché sworn April 21, 2021, Tab 2 of the Motion Record of the Applicant dated April

18. The Plan does not provide for a release of the following types of claims:

(a) the right to enforce the Unaffected Claims against the Applicant, only to the extent that such Unaffected Claims are not paid in full pursuant to the Plan;

(b) the right to enforce any of LU's obligations under the Plan, the Sanction Order, or any other document delivered by LU pursuant to the Plan;

(c) the right to assert the Excluded D&O Claims, but only by the specific claimant(s), against the specific D&Os named in the Excluded D&O Claims, for the specific cause(s) of action asserted;

(d) claims by EY, the CRO, counsel to the Applicant, counsel to the Monitor, and independent counsel to the Board, including as secured by the CCAA Charges; and

(e) any claim against a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.[24]

19. The Plan is subject to certain customary conditions to implementation of the Plan. The following represent some conditions that are unique to LU's Plan:

(f) all Pre-Filing Grievances, Restructuring Grievances, and Material Post-Filing Grievances shall be fully resolved or withdrawn by the applicable union; and

(g) there will be a renewal of two senior management positions at LU prior to the Effective Time.[25]

21, 2021, CaseLines# A2315.

[24] Section 1.1 of the Plan, Tab 3A of the Motion Record, CaseLines# A8065.

[25] Section 10.1(c) and (f) of the Plan, Tab 3A of the Motion Record, CaseLines# A8090.

20. If approved and sanctioned, the Plan would result in a significantly improved balance sheet and working capital necessary for LU to continue operations while working through the Post-Plan Implementation Steps. In particular, the Plan would compromise all pre-filing indebtedness and compromise and release all Released Claims against LU, permitting LU to have a fresh start upon emergence from the CCAA.[26]

21. LU is not presently seeking Court approval of the Plan. Rather, LU is seeking to file the Plan with the Court and to bring the Plan before the Affected Creditors to vote upon at the Meeting. The Plan reflects a significant step forward in the restructuring of LU and results from the Mediation that took place between February to April 2021, the various third-party reviews undertaken by LU with the assistance of external consultants, and extensive multi-party discussions and negotiations. In the views of the Applicant and the Monitor, the Plan provides a path for a better outcome for the Affected Creditors and all of the broader stakeholders of LU than they would derive from a bankruptcy or liquidation of LU.[27]

C. The Meeting Order

22. The proposed Meeting Order provides that LU is authorized to file the Plan and to convene the Meeting of a single class of the Affected Creditors to consider and vote on the Plan Resolution.[28]

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[26] Haché Affidavit at para. 16, Tab 2 of the Motion Record, CaseLines# A8009-A8010.
[27] Haché Affidavit at para. 44, Tab 2 of the Motion Record, CaseLines# A8019; Fourteenth Report of the Monitor at paras. 67-68, CaseLines# E1578.
[28] Haché Affidavit at para. 45, Tab 2 of the Motion Record, CaseLines# A8019; Meeting Order at para. 3, Tab 3 of the Motion Record, CaseLines# A8034.

23. The Meeting has been scheduled to be held virtually on September 14, 2022, at 10:00 a.m. Eastern Time.[29] A service provider has been retained to provide a secure virtual platform for the Meeting. This service provider has conducted many similar creditor meetings and is able to accommodate a bilingual Meeting with secure access.

24. The salient features of the proposed Meeting Order include:

(a) the form of the Meeting Materials are approved and the Monitor shall provide notice of the Meeting by posting copies of the Meeting Materials on the Monitor's Website in English and French, causing the Notice of Meeting to be published in national and local newspapers, sending the Meeting Materials to all Affected Creditors known to the Monitor as of the date of the Meeting Order in the same language used in the Proof of Claim filed by or sent to an Affected Creditor;[30]

(b) a representative of the Monitor shall preside as the Chairperson of the Meeting and may appoint a Secretary and Scrutineers;[31]

(c) the quorum for the Meeting is one Affected Creditor with a Proven Claim;[32]

(d) if the requisite quorum is not present at the Meeting, the Chairperson shall adjourn the Meeting to such date and time as the Chairperson considers reasonable in the circumstances;[33]

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[29] Haché Affidavit at para. 47, Tab 2 of the Motion Record, CaseLines# A8020; Meeting Order at para. 17, Tab 3 of the Motion Record, CaseLines# A8039.
[30] Haché Affidavit at para. 50, Tab 2 of the Motion Record, CaseLines# A8021; Meeting Order at paras. 8-15, Tab 3 of the Motion Record, CaseLines# A8035-8039.
[31] Haché Affidavit at para. 52(b), Tab 2 of the Motion Record, CaseLines# A8022; Meeting Order at paras. 20-21, Tab 3 of the Motion Record, CaseLines# A8040.
[32] Haché Affidavit at para. 52(c), Tab 2 of the Motion Record, CaseLines# A8022; Meeting Order at para. 22, Tab 3 of the Motion Record, CaseLines# A8040.
[33] Meeting Order at para. 23, Tab 3 of the Motion Record, CaseLines# A8040-8041.

(e) the only parties entitled to attend the Meeting are:

(i) Affected Creditors with Proven Claims, Unresolved Claimants, Persons holding proxies on behalf of such creditors, or legal counsel and financial advisors;

(ii) the Chairperson, the Secretary, and the Scrutineers;

(iii) the Monitor and the Monitor's legal counsel; and

(iv) one or more representatives of the Board of Governors and/or senior management of LU, and LU's legal counsel.[34]

(f) only Affected Creditors with Proven Claims, their duly appointed proxyholders, and Unresolved Claimants are entitled to vote at the Meeting, provided that the Monitor shall keep separate tabulations of votes in respect of Affected Creditors with Proven Claims and Unresolved Claimants;[35]

(g) the votes cast in respect of any Unresolved Claim, including any Unresolved Secured Claim, shall not be counted for any purpose, unless, until and only to the extent that such Unresolved Claim is finally determined to be a Proven Claim that is an Affected Claim;[36] and

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[34] Haché Affidavit at para. 52(d) Tab 2 of the Motion Record, CaseLines# A8022; Meeting Order at para. 25, Tab 3 of the Motion Record, CaseLines# A8041.
[35] Haché Affidavit at para. 52(f), Tab 2 of the Motion Record, CaseLines# A8041; Meeting Order at paras. 26-28 and 38, Tab 3 of the Motion Record, CaseLines# A8041-8042 and A8045.
[36] Haché Affidavit at para. 52(f), Tab 2 of the Motion Record, CaseLines# A8041; Meeting Order at para. 28, Tab 3 of the Motion Record, CaseLines# A8042.

(h) the results of the vote conducted at the Meeting shall be binding on each Affected Creditor, whether such Affected Creditor was present or voted at the Meeting.[37]

25. As LU is a bilingual university, the Meeting Materials (including the Plan, the Information Circular and the creditor forms and notices) are available in English and French and will be available on the Monitor's Website. The English version of the Meeting Materials will be mailed to a Creditor unless their claim was filed in French, in which case the Meeting Materials will be sent to them in French.[38]

26. There are approximately 1,000 individual Compensation Claims pursuant to the Compensation Claims Process Order.[39] In an effort to ensure the maximum participation of holders of Compensation Claims and ease the burden on individual Creditors, the Monitor will be completing extensive information statements and delivering them to approximately 1,000 individual holders of Compensation Claims. These statements will outline the amount of the respective Creditor's claim, and the treatment of their claim (e.g., whether any portion will be paid in full on the Effective Time and whether any portion is unsecured).[40]

27. The Meeting Order allows Affected Creditors or Unresolved Claimants to appoint a proxy (either the Monitor or a third party) to cast its vote on the Plan at the Meeting.[41]

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[37] Haché Affidavit at para. 52(k), Tab 2 of the Motion Record, CaseLines# A8023; Meeting Order at para. 43, Tab 3 of the Motion Record, CaseLines# A8046.
[38] Meeting Order at paras. 10-11, Tab 3 of the Motion Record, CaseLines# A8037.
[39] Fourteenth Report of the Monitor at paras. 33-34, CaseLines# E1570.
[40] Schedule "F" to the Meeting Order, CaseLines# A8219.
[41] Haché Affidavit at para. 53, Tab 2 of the Motion Record, CaseLines# A8023; Meeting Order at para. 31, Tab 3 of the Motion Record, CaseLines# A8043.

28. Proxies must be received by the Monitor by 10:00 a.m. (Eastern Time) on September 9, 2022. If the Affected Creditor or Unresolved Claimant is not able to attend the Meeting but wants to ensure that their vote is counted, the Monitor may be appointed as the proxyholder and the Proxy should indicate how the Affected Creditor or Unresolved Claimant wishes to vote. If the Proxy does not indicate whether to vote for or against the Plan, the Monitor will vote the Proxy for approval of the Plan, unless the Affected Creditor or Unresolved Claimant attends the Meeting and exercises the right to vote.[42]

29. If a person other than the Monitor is appointed as proxyholder of an Affected Creditor or Unresolved Claimant, that proxyholder must attend the Meeting in order to cast the vote on behalf of the Affected Creditor or Unresolved Claimant. If a proxyholder is appointed and the Proxy indicates whether to vote for or against the Plan, the proxyholder must cast the vote in accordance with the Proxy completed by the Affected Creditor or Unresolved Claimant. If a proxyholder is appointed and the Proxy does not indicate whether to vote for or against the Plan, the proxyholder may exercise the proxyholder's discretion in casting the vote.[43]

30. At any time prior to the Meeting, an Affected Creditor or Unresolved Claimant may revoke a validly filed Proxy and attend the Meeting itself or appoint a different proxyholder. This must be done in writing by notice to the Monitor, which notice should be received by the Monitor at least three Business Days prior to the Meeting.[44]

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[42] Haché Affidavit at para. 54, Tab 2 of the Motion Record, CaseLines# A8024; Meeting Order at paras. 30 and 32, Tab 3 of the Motion Record, CaseLines# A8043.
[43] Haché Affidavit at para. 55, Tab 2 of the Motion Record, CaseLines# A8024; Meeting Order at para. 33, Tab 3 of the Motion Record, CaseLines# A8043-8044.
[44] Haché Affidavit at para. 56, Tab 2 of the Motion Record, CaseLines# A8024; Meeting Order at para. 34, Tab 3 of the Motion Record, CaseLines# A8044.

31. If the Plan is approved by the Required Majority of the Affected Creditors at the Meeting, LU intends to seek Court approval of the Plan at a hearing before this Court on October 5, 2022, or such later date as the Court may set (the "**Sanction Hearing**").[45]

32. The Meeting Order provides that service of the Notice of Meeting and the posting of the Meeting Order on the Monitor's website shall constitute good and sufficient service of notice of the Sanction Hearing on all persons who are entitled to receive such service and no other form of service or notice need be made unless any person requests to be included on the Service List.[46]

33. Any person who wishes to receive materials in respect of the Sanction Hearing and appear at the Sanction Hearing shall serve on counsel to LU and counsel to the Monitor a request to be added to the Service List by no later than five (5) calendar days prior to the Sanction Hearing. Any person who wishes to oppose the Sanction Hearing must serve a copy of the materials in support of such opposition by no later than three (3) calendar days prior to the Sanction Hearing.[47]

PART III - ISSUES AND THE LAW

34. The sole issue on this motion is whether the Plan should be accepted for filing and the Meeting Order should be granted.

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[45] Haché Affidavit at para. 57, Tab 2 of the Motion Record, CaseLines# A8024; Meeting Order at para. 44, Tab 3 of the Motion Record, CaseLines# A8047.
[46] Haché Affidavit at para. 58, Tab 2 of the Motion Record, CaseLines# A8025; Meeting Order at para. 45, Tab 3 of the Motion Record, CaseLines# A8047.
[47] Haché Affidavit at para. 59, Tab 2 of the Motion Record, CaseLines# A8025; Meeting Order at paras. 46-47, Tab 3 of the Motion Record, CaseLines# A8047.

A. The Meeting Order Should Be Granted

(a) Test for granting Meeting Order

35. Section 4 of the CCAA provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.

36. The threshold for a Court issuing a meeting order is low. As the Ontario Court of Appeal held in *Nova Metal Products*, the feasibility of a plan is a relevant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.[48]

37. Courts are not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that a plan cannot be approved by the affected creditors, a debtor company should be authorized to present its plan to its creditors at a meeting and issues of fairness are to be considered at the sanction hearing, if the plan is approved by the required majorities of creditors at the meetings.[49]

38. The Plan filed with this Court is described in detail in the Haché Affidavit and appended as Schedule "A" to the Meeting Order. The Plan does not contain any provisions that would render it incapable of being approved by creditors and implemented, if approved by the Court.

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[48] *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (Ont. C.A.) at para. 90 [*Nova Metal Products*].

[49] *Re ScoZinc Ltd.,* 2009 NSSC 163 at paras. 4-7; *Re Jaguar Mining Inc.,* 2014 ONSC 494 at para. 48; *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657 at para. 19.

39. The Plan is the result of negotiations with LU's stakeholders, and the receipt of the Plan Support Letter. LU believes that the Plan will provide the best available result for LU's stakeholders. The Plan, if approved, is expected to significantly improve the financial position of LU and allow it to continue as a going concern, which is for the benefit of its students, staff, faculty, the Greater Sudbury community, and the Northern Ontario region.[50]

40. LU and the Monitor have taken extensive steps to ensure Affected Creditors can participate in the Meeting to the fullest extent possible, including:

(a) setting the date of the Meeting sufficiently far in advance to provide adequate time for notice of the Meeting Order and the Meeting Materials to be mailed to Affected Creditors with sufficient time for them to consider in advance of the Meeting;

(b) having the Meeting Materials (including the Plan, the Information Circular and the creditor forms and notices) available in English and French to accommodate English, bilingual and Francophone creditors; and

(c) mailing detailed information statements to all Affected Creditors, including approximately 1,000 holders of Compensation Claims.

41. The Meeting Order is fair and reasonable in the circumstances and will allow Affected Creditors to fully consider the Plan and effectively participate in the Meeting.

42. The Monitor supports the approval of the Meeting Order.[51]

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[50] Haché Affidavit at para. 44, Tab 2 of the Motion Record, CaseLines# A8019; Fourteenth Report of the Monitor at paras. 67-68, CaseLines# E1578.
[51] Fourteenth Report of the Monitor at para. 104, CaseLines# E1584.

43. In accordance with the Plan, if the Plan is approved by the Required Majority, LU intends to seek a Sanction Order on October 5, 2022.

(b) Proposed Classification of Creditors for Voting and Distribution is Appropriate

44. Section 22(1) of the CCAA provides that a debtor company may divide creditors into classes for the purpose of a meeting in respect of a plan of compromise or arrangement. Section 22(2) of the CCAA provides that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest, taking into account (among other things) (a) the nature of debts, liabilities or obligations giving rise to their claims; (b) the nature of any security in respect of their claims, as well as the remedies available to those creditors in the absence of the compromise or arrangement being sanctioned; and (c) the extent to which those creditors would recover on their claims by exercising those remedies.

45. Classification of creditors is a fact-specific determination that must be evaluated in the unique circumstances of every case. It must be approached with the flexible and remedial jurisdiction of the CCAA in mind – namely, to facilitate reorganization, if at all possible.[52] One of the principal objectives of classification is the avoidance of unnecessary fragmentation. As Farley J. stated in *Stelco*, "fragmentation if necessary, but not necessarily fragmentation."[53] Excessive fragmentation of creditor classes is generally

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[52] *Re Canadian Airlines Corp*. (2000), 19 CBR (4th) 12 (Alta. Q.B.) at para. 18 [*Canadian Airlines*], leave to appeal ref'd 2000 ABCA 149.
[53] *Re Stelco Inc.*, [2005] OJ No 4814 (Ont. S.C.) at para. 13 [*Stelco*], aff'd 78 OR (3d) 24 (Ont. C.A.) [*Stelco Appeal*]; cited in *Re SemCanada Crude Co.*, 2009 ABQB 490 at para. 21.

antithetical to a successful restructuring, because it can confer an effective veto on those creditors who are placed in separate classes.[54]

46. In accordance with the Meeting Order, LU proposes that all Affected Claims will be grouped into a single class for the purposes of considering and voting on the Plan.

47. In proposing a single class, LU and the Monitor have considered, among other things, the nature of the obligations giving rise to the Affected Claims, the nature and priority of the Affected Claims, and the legal entitlements and remedies available to creditors in the absence of the Plan.[55]

48. The Affected Creditors are all unsecured creditors of LU. The single classification is based on the rights and remedies of the class of these creditors against the debtor (*i.e.*, whether those creditors hold security for their claims). In this case, all Affected Creditors would receive a *pro rata* distribution from the Distribution Pool. This is a common basis for classification. Specifically, the classification of unsecured creditors as one class has been recognized as appropriate by the Ontario Court of Appeal.[56]

49. LU has not proposed a separate class for Secured Claims. Pursuant to the Plan, if approved, Secured Claims will receive payment in full from the Distribution Pool on the Plan Implementation Date. The Distribution Pool will be funded by LU (subject to reimbursement when proceeds from the sale(s) of the Designated Real Estate Assets close) and administered by the Monitor. To the extent that an Unresolved Secured Claim becomes

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[54] *Atlantic Yarns Inc., Re*, 2008 NBQB 144 at para. 59, citing *Stelco Appeal* at paras. 35-36; *Canadian Airlines* at para. 30, citing *Sklar-Peppler Furniture Corp v Bank of Nova Scotia*, 86 DLR (4th) 621 at paras. 13-14.
[55] Haché Affidavit at para. 20, Tab 2 of the Motion Record, CaseLines# A8012.
[56] *Stelco*; aff'd *Stelco Appeal*, *supra* note 53.

a secured Proven Claim after the Plan Implementation Date, LU will forthwith provide further funding to the Distribution Pool to pay in full the amount of such Secured Claim.[57]

50. Upon repayment in full of a Secured Claim, LU will no longer have any obligations to such Secured Creditor with a Secured Claim. Accordingly, the Plan contemplates the release and discharge of all Secured Claims, effective on the Plan Implementation Date.[58]

51. The Monitor supports the approval of the classification of creditors set out in the Plan for the purposes of the Meeting and voting on the Plan.[59]

52. LU submits that the proposed classification is consistent with the objectives of the CCAA and the interests of its Creditors, and should be approved.

(c) The Unaffected Claims are not being compromised or affected

53. The purpose of the Meeting is for, among other things, the Affected Creditors to vote on a compromise or arrangement of their Affected Claims. The Meeting Order does not provide Unaffected Creditors with a vote in respect of any such portion of its Claim that is an Unaffected Claim.

54. In *Callidus*, the Supreme Court of Canada found that for the purpose of the CCAA, an "arrangement" or a "compromise" requires, at minimum, some compromise or diminishment of the creditor's rights. The presence of compromise or diminishment is a contextual and fact-specific inquiry.[60]

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[57] Haché Affidavit at para. 21, Tab 2 of the Motion Record, CaseLines# A8012; Section 7.9(c) of the Plan, Tab 3A of the Motion Record, CaseLines# A8084.
[58] Haché Affidavit at para. 22, Tab 2 of the Motion Record, CaseLines# A8012.
[59] Fourteenth Report at para. 104(b), CaseLines# E1584.
[60] *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 at para. 102.

55. It is common that unaffected creditors do not vote on a CCAA plan in respect of their unaffected claims. Although there is not one meaning of unaffected and the parties negotiating a CCAA plan may define what is unaffected or not, it is common for creditors to be considered unaffected if their claims are not compromised.[61]

56. Although the CCAA provides no definition of "compromise", various courts have, in *obiter*, noted that the term requires a diminishment of creditors' rights in regard to their claims.[62] Creditors are not compromised where they are to be repaid in full and the rights and defences associated with their claims are not diminished by the CCAA plan in question.[63] Releases in a CCAA plan should not be construed as affecting an unaffected creditor because the debtor company has no further obligation to the unaffected creditor once repayment in full occurs.

57. The Affected Creditors are being compromised as their Affected Claims will not be fully paid and they will not be paid immediately upon the Plan Implementation Date.

58. The Unaffected Creditors are not being compromised in respect of their Unaffected Claim. The list of Unaffected Claims is set out in paragraph 17(c) above.

59. The CCAA Priority Claims, Secured Claims, and Vacation Pay Compensation Claims will all be paid in full sequentially at the Effective Time, respectively (subject to the terms set out in the Plan).[64]

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[61] *Air Canada, Re*, 2004 CanLII 6677 (ON SC) at para. 15.
[62] See: *Re Calpine Canada Energy Limited (CCAA)* at paras. 12, 51, 55; *Re Crystallex International Corporation* at paras. 49, 50, 53; [*Callidus*] at paras. 101-102.
[63] *Skylink Aviation Inc., Re*, 2013 ONSC 2519 at para. 19 [*Skylink Aviation*].
[64] Sections 7.3-7.5 of the Plan, Tab 3A of the Motion Record, CaseLines# A8082-8083.

60. The Excluded D&O Claims are excluded in their entirety from the Plan and are not being compromised or released by the Plan. Any Person with an Excluded D&O Claim may, if they wish, pursue such Excluded D&O Claims outside of the CCAA proceeding. Any determinations made in the Claims Process as it relates to claims against LU are without prejudice to the rights of the claimant, the defendants, the insurer and the Monitor in respect of each Excluded D&O Claim.[65]

61. Holders of Insured Claims have agreed to withdraw their claims from the Claims Process and limit their recovery in respect of such Insured Claims to the proceeds of any applicable insurance policies of LU. Insured Claims will therefore be released and discharged as against LU and the other Released Parties under the Plan. Nothing in the Plan will prejudice, compromise, release or otherwise affect any right or defence of any insured in respect of an Insured Claim.[66]

62. Accordingly, it is reasonable and appropriate in the circumstances to not provide the Unaffected Creditors a vote in respect of their Unaffected Claim.

PART IV - RELIEF REQUESTED

63. For all of the foregoing reasons, the Applicant requests that the Meeting Order be granted, substantially in the form of the draft Order included at Tab 3 of its Motion Record dated July 21, 2022.

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[65] Haché Affidavit at para. 27, Tab 2 of the Motion Record, CaseLines# A8013-8014; Section 2.4 of the Plan, Tab 3A of the motion Record, CaseLines# A8073.

[66] Haché Affidavit at para. 26, Tab 2 of the Motion Record, CaseLines# A8013; Section 3.9 of the Plan, Tab 3A of the motion Record, CaseLines# A8075. See also *Skylink Aviation* at para. 19.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of July, 2022.

Thornton Grout Finnigan LLP

Counsel for the Applicant

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 OAC 282 (Ont. C.A.)
2. *Re ScoZinc Ltd.,* 2009 NSSC 163
3. *Re Jaguar Mining Inc.,* 2014 ONSC 494
4. *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657
5. *Re Canadian Airlines Corp*. (2000), 19 CBR (4th) 12 (Alta. Q.B.), leave to appeal ref'd 2000 ABCA 149.
6. *Re Stelco Inc.*, [2005] OJ No 4814 (Ont. S.C.), aff'd 78 OR (3d) 24 (Ont. C.A.)
7. *Re SemCanada Crude Co.*, 2009 ABQB 490
8. *Atlantic Yarns Inc., Re*, 2008 NBQB 144
9. *Sklar-Peppler Furniture Corp v Bank of Nova Scotia*, 86 DLR (4th) 621
10. *9354-9186 Québec Inc. v. Callidus Capital Corp*., 2020 SCC 10
11. *Air Canada, Re*, 2004 CanLII 6677 (ON SC)
12. *Re Calpine Canada Energy Limited (CCAA)*, 2007 ABQB 504 (CanLII)
13. *Re Crystallex International Corporation*, 2012 ONSC 2125 (CanLII)
14. *Skylink Aviation Inc., Re*, 2013 ONSC 2519

SCHEDULE "B" – RELEVANT STATUTES

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

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors

5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

General power of court

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.

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- **(a)** the nature of the debts, liabilities or obligations giving rise to their claims;
- **(b)** the nature and rank of any security in respect of their claims;
- **(c)** the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- **(d)** any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

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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