

**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**

MOTION RECORD

**(Motion by Thorneloe University appealing the decision of Claims Officer Niels
Ortved re: disallowance of Thorneloe's loss of commercial value claim)**

October 7, 2022

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

NOTICE OF MOTION

**(Motion by Thorneloe University appealing the decision of Claims Officer Niels
Ortved re disallowance of Thorneloe's loss of commercial value claim)**

Thorneloe University, a university pursuant to *An Act to Incorporate Thorneloe University*, S.O. 1960-1961, c. 135 ("**Thorneloe**"), will make a motion pursuant to paragraph 38 of the Claims Procedure Order dated May 31, 2021, to Chief Justice Morawetz presiding over the Commercial List, returnable on a date to be fixed by the Court at Toronto, Ontario.

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

THE MOTION IS FOR:

1. **AN ORDER**, if necessary, that the time for service of the Notice of Motion and the Motion Record is hereby abridged, extended and validated and that further service thereof is dispensed with;
2. **AN ORDER** directing a mediation before the court-appointed mediator herein, Justice Dunphy, or another mediator, of this appeal of the decision of Claims Officer Niels Ortved dated September 8, 2022 of his denial of Thorneloe's loss of commercial value claim and valuing that claim at \$0.00, relating to the Applicant's disclaimer of the Federation Agreements;
3. **AN ORDER**, in the alternative to a mediated resolution, allowing the appeal of the decision of the Claims Officer Ortved dated September 8, 2022 of his denial of Thorneloe's loss of commercial value claim and valuing that claim at \$0.00, relating to Applicant's disclaimer of the Federation Agreements, and that an amount representing Thorneloe's loss of its commercial value is allowed as a valid claim in the CCAA claims process of the Applicant.
4. Costs; and
5. Such further and other relief as counsel may advise and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

6. On February 1, 2021, Laurentian University applied for and obtained protection from its creditors under the CCAA.

7. Since its inception in 1961, Laurentian operated under the "Federated University model". Three universities established in their own rights under statute, namely, Thorneloe University (the moving party/appellant herein), University of Sudbury ("USudbury"), and Huntington University ("**Huntington**") entered into agreements to be integrated with Laurentian, provide their own courses and programs for the Laurentian Faculty of Arts curriculum, suspend their own degree-granting powers, and operate with Laurentian as "one university". The terms of the federation, the administrative integration of the universities, and the flow of tuition and grant money to the three federated universities for the courses they provided were governed by contracts known as the Federation Agreements.

8. Immediately after the granting of CCAA protection on February 1, 2021, a mediator was appointed (Dunphy, J. of the Ontario Superior Court) to conduct mediation meetings with the major stakeholders, including the federated universities.

9. On April 1, 2021, Laurentian delivered a Notice of Disclaimer of the Federation Agreement to Thorneloe (and USudbury) under s. 32(1) of the CCAA.

10. The disclaimers were not simply to get Laurentian out of a contract that it no longer wanted to be a party to. Rather, they were aimed at rendering the federated universities non-operational as part of Laurentian. Laurentian said it would gain \$2.1M a year by removing Thorneloe courses from its curriculum (and with the disclaimers of the other federated universities, that it would gain \$7.2M total).

11. Facing the threat to their existence, Thorneloe (and USudbury) opposed the disclaimers in contested motions brought before the CCAA Judge. In a decision released on Sunday, May 2, 2021, (with reasons that followed on May 7, 2021,¹) the court upheld the disclaimers.²

12. The next Monday morning, May 3, 2021, the day classes were scheduled to start, Laurentian removed all of Thorneloe's courses and programs from its curriculum.

13. Overnight, Thorneloe went from a teaching university with courses, faculty and students in its courses, to a university with no courses and soon to be terminated faculty and staff.³

14. Thorneloe sustained substantial losses all related to and caused by Laurentian's disclaimer of the Federation Agreements.

¹ *Laurentian University of Sudbury*, 2021 ONSC 3272 (CanLII).

² Huntington entered into an agreement with Laurentian and did not oppose its disclaimer. USudbury also opposed the disclaimer of its Federation Agreement by Laurentian. See *Laurentian University v. Sudbury University*, 2021 ONSC 3392 (CanLII).

³ Thorneloe only has its on-line Theology course remaining, which is not part of the Laurentian curriculum.

15. The CCAA Judge noted the significant impact of Laurentian's disclaimers in his decision:

[67] Thorneloe also raises the concern that the Disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make insolvency filings pursuant to the CCAA or the *Bankruptcy and Insolvency Act*.

[68] There is no doubt that this is a legitimate point being raised by Thorneloe. The impact of the disclaimer on Thorneloe is significant. The consequence of the disclaimer is such that Thorneloe will be unable to operate in its current form.

16. The disclaimers of the Federation Agreements and Laurentian's immediate removal of its courses from the curriculum were catastrophic for Thorneloe. It had to reduce its faculty and staff to four, and pay the terminated its employee's substantial severance pay. Thorneloe had approximately 2,500 students enrolled in its courses. After the disclaimers, it had only 36 students remaining in its on-line Theology program.

The Claims Process

17. On May 31, 2021, Laurentian commenced a Claims Process calling for the claims of its creditors. Thorneloe submitted disclaimer-related claims under section 32(7) of the CCAA which states that "a party to the agreement *who suffers a loss in relation to the disclaimer* or resiliation *is considered to have a provable claim*".

18. The Monitor allowed two of Thorneloe's disclaimer-related claims: the amount that Thorneloe paid as severance pay to its staff that it had to terminate, and an amount relating to separation costs that relate to costs incurred by Thorneloe's for it to disengage

from Laurentian's administrative systems (e.g., email, internet, telephone and other shared services).

19. The Monitor disallowed Thorneloe's other disclaimer-related claims, two of which were determined at a claims hearing conducted in writing: a) the claim for loss to Thorneloe's commercial value, set out in an expert valuation report (the subject of this appeal); and, b) the professional costs Thorneloe had to incur to defend itself against Laurentian's disclaimers.

20. This appeal relates only to the disallowance of Thorneloe's commercial loss of value claim.

No material prejudice to Laurentian or other creditors

21. On July 21, 2022, Laurentian brought forward a proposed Plan of Compromise and filed it with the CCAA court. Under its Plan, Laurentian is not contributing any of its own cash to paying creditors' claims. Instead, Laurentian entered into an arrangement with the Ontario government to buy certain lands from Laurentian for a total amount of "up to \$53.5M" over a three-year period. Distributions to creditors will be made from those sales proceeds estimated to be in the range of 14-24 cents on the dollar.

22. On September 14, 2022, Laurentian held a creditors meeting to vote on its proposed Plan of Compromise. The vote passed the "double majority" required under

the CCAA. The Plan of Compromise will now be brought before the CCAA Court for sanction on October 5, 2022.

23. The estimates of distribution recoveries to creditors by the Monitor in the range of 14-24% will not change with the allowance of Thorneloe's commercial loss claim.

24. On July 30, 2021, Thorneloe submitted a Proof of Claim with different categories of disclaimer-related losses caused to it by Laurentian's disclaimers (as well as amounts for pre-disclaimer unpaid tuition and grant funds that Laurentian had not transferred to it)⁴. The total amount of Thorneloe's claim was \$14,879,456.

25. On May 25, 2022, the Monitor sent a Notice of Disallowance to Thorneloe allowing the severance pay and separation cost claim, in the total amount of only \$1,922,860.93, and disallowing all the others. On June 8, 2022, Thorneloe responded with a Notice of Dispute contesting the Monitor's disallowances of its claims, in particular its claims for loss of Academic and Commercial Value of a total of \$9,800,000, and the professional costs it incurred in relation to the disclaimer. The other Thorneloe claims are no longer applicable.

26. To prove the basis and the calculation of its Academic and Commercial Value claim amount, Thorneloe retained an Expert valuator (Glen Bowman, CBV of Farber Corporate Finance Inc.; the "**Farber Valuation**") which valued the commercial loss to

⁴ The Monitor allowed a partial claim for receivables in the amount of \$341,187.93 owing to Thorneloe by Laurentian as of the CCAA filing date based on grants and tuition owing for Thorneloe courses that Laurentian did not transfer over to Thorneloe. This was reduced from Thorneloe's original receivables claim of \$524,783.

Thorneloe in the total amount of \$9.8 million. The credentials of the expert and his qualifications were not challenged by the Monitor.

27. The Farber Valuation concluded that:

As set out in Appendix A, based on information and data relied upon, and subject to the restrictions and qualifications and assumptions and major considerations noted herein, ***Farber has concluded that the estimated enterprise value of Thorneloe on or about the Valuation Date to be in the approximate range of \$9.5 million to \$10 million. If Farber were asked to select a particular value, it would select the midpoint of \$9.8 million.*** [emphasis added]

28. The Monitor did not cross-examine the Farber expert, nor did it file a responding expert report.

Errors of the Claims Officer

29. The Claims Officer made a number of errors, including the following:

- (a) Erred at law by disregarding entirely the conclusions in the Farber Valuation, contrary to caselaw which holds that a commercial loss damage claim should be proved by a specialized expert valuator holding a "Certified Business Valuator" accreditation, which the Farber expert has⁵;
- (b) Erred at law by entirely rejecting the \$9.8M valuation loss amount of the Farber Valuation which had the effect of valuing this claim at \$0.00 and

⁵ *Laderoute v Heffernan*, 2019 ONSC 914 at para 13.

without even allowing an alternative lower amount of approximately \$2.8 million to \$3.3 million, which is also referenced in the Farber Valuation;

- (c) Erred at law by holding that since the claims dispute proceeded via a claims hearing in a CCAA, and not a regular trial, the Monitor is relieved of its evidentiary burden to challenge the Farber Valuation and need not cross-examine the expert, nor have to deliver a responding expert report, contrary to *inter alia McNevan v Agrico Canada Ltd*, 2011 ONCA 720;
- (d) Erred at law by holding that Thorneloe is estopped from arguing that the Monitor failed to meet its evidentiary burden to challenge the Farber Valuation;
- (e) Erred at law by ruling that the correct legal approach to assess damages caused to a party by a disclaimer under section 32(7) of the CCAA is the measurement of a compensable loss and because Thorneloe, a registered non-profit charitable institution, had been unprofitable in recent years, the valuation methodology used in the Farber Valuation must be flawed, even though the Farber Valuation expressly considered Thorneloe's lack of profitability. In so doing, the Claims Officer erred by placing inordinate reliance on a principle that a harmed party not be placed into a "better" position than it was before the breach, which is entirely

applicable to Thorneloe particularly given the distributions to be made to creditors in this case; and

- (f) Erred at law by creating an absurd principle for the assessment of damages for not-for profit entities, such as a charity, by holding that, in essence, a party contracting with a not-for-profit entity can breach its contract and destroy the revenue of the entity without being liable to it for any loss of commercial value.

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

THE FOLLOWING DOCUMENTARY EVIDENCE:

- 1. Thorneloe's Proof of Claim dated July 30, 2021;
- 2. The Disallowance of the Monitor dated July 13, 2022;
- 3. Thorneloe's Notice of Dispute dated July 21, 2022;
- 4. The decision of the claims officer dated September 8, 2022;
- 5. The decision of the Chief Justice Morawetz dated April 21, 2021;
- 6. The Order appointing a Mediator dated February 5, 2021; and
- 7. Such further and other material as counsel may advise and this Honourable Court permits.

September 19, 2022

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Lawyers for Thorneloe University

TO: SERVICE 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**

12

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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Motion by Thorneloe University appealing the
decision of Claims Officer Niels Ortved re:
disallowance of Thorneloe's loss of commercial
value claim)**

KOSKIE MINSKY LLP

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Lawyers for Thorneloe University

TAB 2



July 30, 2021

Andrew J. Hatnay
Direct Dial: 416-595-2083
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ahatnay@kmlaw.ca

Via E-Mail (LaurentianUniversity.monitor@ca.ey.com)

Ernst & Young Inc.
Court-Appointed Monitor of Laurentian University
Ernst & Young Tower
100 Adelaide St. West, P.O. Box 1
Toronto, ON M5H 0B3

Dear Sir or Madam:

**Re: Laurentian University CCAA, Court File No. CV-21-656040-00CL
Proof of Claim of Thorneloe University**

We act on behalf of Thorneloe University in the above-noted matter.

Enclosed is a Proof of Claim with Schedules which we submit on behalf of Thorneloe University ("TU") for losses it has suffered in relation to Laurentian's disclaimers of the Federation Agreements as of May 30, 2021 and Laurentians' cancellation of all Thorneloe programs and courses the next day on May 31, 2021.

As Laurentian knows, as a result of its disclaimer of the Federation Agreements, TU is in the process of completely winding down (other than its Theology program). As of today's date, the wind down process remains underway, is not complete, and involves TU having to make a variety of payments of on-going costs and expenses from a static pool of remaining funds that it has, all of which are losses in relation to the disclaimers.

Since the wind down process is on-going, TU's claims cannot be crystallized with finality as of the claims bar date and all of its loss amounts will continue to increase. We will provide updates on the losses and adjusted claims as they become finalized.

In the circumstances, TU therefore reserves the right to amend all the figures in its Proof of Claim and to add additional claims that is not yet aware of as it proceeds through the wind down process.



At this time and as set out in the Proof of Claim and schedules we are submitting claims with respect to the following:

- a) Severance payments to Thorneloe faculty and employees;
- b) Additional payments to the Laurentian Pension Plan;
- c) Receivables owing by Laurentian to Thorneloe;
- d) Retiree Health Benefits Plan surplus amounts;
- e) Separation costs;
- f) Legal and advisor costs;
- g) Insolvency filing costs; and,
- h) Loss to Thorneloe's academic and commercial value.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay".

Andrew J. Hatnay

/encl.

- c. Demetrios Yiokaris and Sydney Edmonds, *Koskie Minsky LLP*
Allan Nackan, *Farber Group*

PROOF OF CLAIM

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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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**
("LU" or the "Applicant")

PROOF OF CLAIM**1. PARTICULARS OF CREDITOR**

Full Legal Name of Creditor:	Thorneloe University c/o John Gibaut President of Thorneloe University and Andrew J. Hatnay Koskie Minsky LLP
Full Mailing Address of Creditor:	900-20 Queen Street West, Toronto, Ontario M5H 3R3
Telephone Number of Creditor:	416-557-3633
E-mail Address of Creditor:	ahatnay@kmlaw.ca
Attention (Contact Person):	Andrew Hatnay – Koskie Minsky LLP

2. PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE:

- (a) Have you acquired this Claim by assignment? Yes ☐ **No** **X**
(if yes, attach documents evidencing assignment)

a. Full Legal Name of original creditor(s):

3. PROOF OF CLAIM

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

That I am counsel for the Creditor and have knowledge of all the circumstances connected with the Claim described herein;

That I have knowledge of all the circumstances connected with the Claim described and set out below;

The Applicant was and is still indebted to the Creditor as follows:

	Class of Claim Against the Applicant (Pre-Filing Claims, Restructuring Claim)	Amount of Claim Against the Applicant (include the foreign currency if not Canadian dollars)
1.	Severance Payments to Thorneloe faculty and employees	\$1,481,673
2.	Additional Payments to the Laurentian Pension Plan	\$600,000 (this is a placeholder claim; which is done without admission of liability and will change depending on the outcome of discussions with Laurentian's pension counsel)
3.	Receivables owing by Laurentian to Thorneloe	\$524,783
4.	Retiree Health Benefits Plan "surplus" amount	\$23,000 (subject to verification of that amount and any changes that may be warranted)
5.	Separation costs	\$100,000 (estimated)
6.	Legal and Advisor Costs	\$1,850,000 (approximately \$1,500,000 has been incurred to date and the balance is estimated)
7.	Insolvency Filing Costs	\$500,000 (estimated)
8.	Loss to Thorneloe's academic and commercial value	\$11,479,624 (subject to change pending the preparation of a valuation report that is being completed shortly- see Schedule "A")
TOTAL AMOUNT OF CLAIMS		\$ 16,559,080*

***As a result of the disclaimers, Thorneloe is in the process of winding down (other than its Theology program). The wind down process is currently fluid and involves the payments of on-going costs and expenses by Thorneloe from a static pool of remaining funds that it has, all of which are losses in relation to the disclaimers. Since the wind down process is on-going, Thorneloe's claims cannot be crystallized with finality on the claims bar date and all of the loss amounts will continue to increase. Thorneloe therefore reserves the right to amend all the figures in this Proof of Claim and to add additional claims that is not yet aware of as it proceeds through the wind down process. See Schedule A to the Proof of Claim, which provides additional information and particulars.**

4. NATURE OF CLAIM

(CHECK AND COMPLETE APPROPRIATE CATEGORY)

- ☒ Total Unsecured Claim of \$16,011,297
- ☒ Trust Claim of \$547,783 (see note below)
- ☐ Total Secured Claim of \$ _____

In respect of this debt, I hold security over the assets of LU valued at \$ _____, the particulars of which security and value are attached to this Proof of Claim form.

(If the Claim is secured, provide full particulars of the security, including the date on which the security was given, the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)

As set out in Schedule "A", the claims are unsecured claims, except the claims relating to: a) Receivables owing by Laurentian to Thorneloe; and b) the RHBP "surplus" amount. These are both claimed as first priority trust claims, and Thorneloe also reserves the right to set of these amounts against any payments that may be owing by Thorneloe to Laurentian for various service costs and/or any other amounts. In addition, Thorneloe reserves the right to set of any amounts allegedly owing to Laurentian from its claims herein.

Further, as set out in Schedule "A", the amounts claimed regarding the RHBP "surplus" amount are also claimed as against Thorneloe's Board of Governors, and all directors and officers, amongst others.

5. PARTICULARS OF CLAIM:

The particulars of the undersigned's total Claims (including Pre-Filing Claims, Restructuring Claims or any D&O Claims) are attached. **See attached Schedule "A".**

(Provide full particulars of the Claim(s) and supporting documentation you are asserting a Claim against, the amount, description of transaction(s) or agreement(s) giving rise to the Claim(s), name of any guarantor(s) which has guaranteed the Claim(s), and amount of Claim(s) allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. In the event that any part of your claim also includes a claim amount against the Directors and Officers, please particularize the exact amount claimed against the Directors and Officers and the accompanying legal analysis. If you fail to sufficiently explain the legal analysis in respect of any claim against the Directors and Officers, that portion of the claim will be revised or disallowed.

FILING OF CLAIM

For Pre-Filing Claims, this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto Time) on the Pre-Filing Claims Bar Date (July 30, 2021).

For Restructuring Claims, this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto Time) on the date that is the later of: (i) July 30, 2021, and (ii) thirty (30) days following the date on which the Monitor sends a Claims Package with respect to such Restructuring Claim.

For D&O Claims, this Proof of Claim must be returned to and received by the Monitor by 5:00 p.m. (Toronto Time) on the D&O Claims Bar Date (July 30, 2021).

In each case, completed forms must be delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email to the Monitor at the following address:

Ernst & Young Inc.
 Court-appointed Monitor of Laurentian University of Sudbury
 Ernst & Young Tower
 100 Adelaide Street West, P.O. Box 1
 Toronto, Ontario M5H 0B3

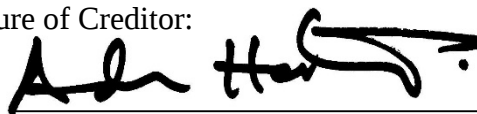
Hotline: 1-888-338-1766 / 1-416-943-3057
 Email: LaurentianUniversity.monitor@ca.ey.com

Dated at Toronto this 30th day of July, 2021.

Witness Name:

Name of Creditor:

Signature of Creditor:

A handwritten signature in black ink, appearing to read "Andrew Hatnay", written over a horizontal line.

*If Creditor is other than an individual, print name
and title of authorized signatory*

Name: Andrew Hatnay

Title: Koskie Minsky LLP, Partner
(counsel to Thorneloe University)

SCHEDULE "A"
PROOF OF CLAIM OF THORNELOE UNIVERSITY

LAURENTIAN UNIVERSITY CCAA PROCEEDING
ONTARIO COURT FILE NO. CV-21-656040-00CL

The following sets out particulars of the claims by Thorneloe University ("TU") against Laurentian University ("LU").

BACKGROUND

On April 1, 2020, LU delivered a Notice of Disclaimer for the Federation Agreements it had with TU. TU opposed the disclaimers in court under section 32(2) of the CCAA.

On Sunday May 30, 2021, the CCAA Judge issued a decision upholding the disclaimers. The next morning on May 31, 2021, LU removed all of TU's courses from its curriculum that were to commence to be taught that day, thus immediately cutting off all of TU's income for the courses from tuition and provincial grants that it provided and taught.

The effect of the upholding of the disclaimers of the Federation Agreements and LU's immediate removal of all TU courses from the LU curriculum was catastrophic for TU and has caused significant losses to TU that render it no longer able to operate its three main programs and employ the faculty. Other than on-line Theology, TU no longer has the income to produce and offer its three main programs.

Since TU's main tuition and grant income have been terminated as a result of LU disclaimers, TU had to reduce its faculty and staff from 40 employees to four. The number of students who enrolled in TU courses was 2500. As a result of LU's cancellation of all of TU's courses, there are only 36 students remaining in its Theology program.

LU has destroyed TU's value as an operating university, and TU cannot now market itself commercially nor academically to merge or be assimilated with another academic institution. Nor can it operate as a stand-alone university since it was conceived and designed in the early 1960's to function symbiotically LU as "one university" under a federated university model that is common in many Canadian universities.

The report of Farber Financial dated April 19, 2021 (attached to this Proof of Claim as Schedule "B"), TU's financial adviser that it had to retain to respond to LU's CCAA proceeding, states that TU will suffer significant losses in relation to LU's disclaimers of the Federation Agreements and LU's removal of all TU courses from the LU curriculum:

2.1. Based on my review of the documents and evidence produced, including discussions with management, financial and legal advisors of Thorneloe, and from my analyses, education, experience and training, it is my opinion, for reasons more fully articulated in the body of this report, that:

- Termination of the Federation Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe itself will have to resort to a formal insolvency process. If terminated, Thorneloe will no longer be eligible to receive government grants which comprise one of its main revenue streams. The

financial losses to Thorneloe on account of termination are estimated to be approximately \$13.7 million over the next five years;

...

6.4. The termination of the Federation Agreement will divest Thorneloe of its ability to offer courses and programs to students that can be counted as credits towards Laurentian degrees. This will result in a complete loss of tuition fee revenue for Thorneloe from Thorneloe courses offered to Laurentian students.

6.5. Thorneloe will also no longer be eligible to receive government grants which comprises one of the main revenue streams for Thorneloe that allows it to carry on its operations. It is estimated that Thorneloe will suffer an annually recurring loss of revenue and incremental annual costs of at least \$2.5 million per annum, which is a significant loss to Thorneloe.

6.6. Thorneloe does not qualify for government grants and without receipt of income from government grants and tuition fees for programs/courses offered to Laurentian students, Thorneloe cannot sustain its operations or continue paying its ongoing costs and liabilities.

6.7. Thorneloe does not have the ability or infrastructure to operate outside of the Laurentian ecosystem. Termination of the Federation Agreement and Financial Distribution Notice was sprung upon Thorneloe two months after the initial CCAA filing and will essentially result in putting Thorneloe out of business because of its inability to teach students and receive revenues after termination.

6.8. This will necessitate termination of employment by Thorneloe of all of its 28 employees, including 7 full-time faculty members, 12 sessional faculty members, 6 administration staff members and 3 casual staff members (students and academic support staff). A number of Thorneloe's faculty are long serving members with a service tenure of 14 to 21 years. These members will lose their employment and their benefits will also be significantly impaired as a result of any proposed modification to the Pension and Benefit plan on account of termination of the Federation Agreement.

6.9. This will result in Thorneloe incurring substantial shut down costs that are estimated to be approximately \$2.2 million (excluding the pension liability) primarily on account of the following:

6.9.1. Severance and termination payments estimated to be approximately \$1.5 million;

6.9.2. Disentanglement expenses and professional fees to the extent of approximately \$700,000; and

6.9.3. the Pension liability may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement.

6.10. The extent of cash outflows that Thorneloe will suffer on account of termination costs and liabilities will deplete its reserve funds, consequently resulting in loss of its recurring revenues of approximately \$180,000 per annum from investment income.

6.11. As mentioned above, Thorneloe and Laurentian operate in a highly integrated framework, so termination would also require the parties to incur substantial disentanglement costs for separation of services (such as IT, utilities, security) and supervision of same.

6.12. Further, upon termination, there would be potential loss of value and complications with realization of fixed assets owned by Thorneloe, comprising Thorneloe's academic, residential and other buildings. The land on which Thorneloe's fixed assets are situated has been leased to Thorneloe as lessee by Laurentian as lessor pursuant to the long-term Lease

Agreement for a term of 99 years that is renewable for a further term of 99 years subject to the terms therein.

6.13. Thorneloe has invested a significant amount of effort and knowledge in the creation and development of its curriculum and courses. The value of this intellectual property will be impaired if it is unable to earn revenues from these courses. While not quantified in this report, these losses are a significant additional category of damages that Thorneloe will suffer as a result of termination.

6.14. Thorneloe is a creditor for approximately \$700,000 in respect of grants and tuition fees collected by Laurentian in respect of Thorneloe courses and not yet remitted to Thorneloe, which relies on this funding to pay its current an ongoing cost. ...

6.16. Thorneloe will have to contend with significant employee and pension liabilities, which will likely necessitate a formal insolvency filing of its own under the Bankruptcy and Insolvency Act or CCAA.

...

6.19. The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value impact of termination over the next 5 years has been shown for illustrative purposes only to demonstrate the losses to Thorneloe over the next 5 years. There was every expectation that Thorneloe would continue to operate with LU as a federation in perpetuity, in which case actual losses will exceed the above estimates by many multiples. Additional damages would also result in respect of its intellectual property, which are not quantified in this report.

6.20. It is estimated that as a consequence of termination, Thorneloe will suffer significant financial losses of approximately \$13.7 million over the next 5 years, comprising of approximately \$2.2 million non-recurring losses due to termination costs/liabilities (which does not include the pension liability that may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement) and approximately \$2.5 million of recurring losses due to loss of annual revenues and incremental costs. The net present value impact of the recurring losses is estimated to be approximately \$11.5 million over the next 5 years.

...

7.1. Accordingly, and as discussed above, it is my opinion that:

- Thorneloe will not be eligible to receive public funding in the form of grants if the termination is allowed. The financial losses to Thorneloe on account of termination are estimated to be approximately \$13.7 million over the next five years, excluding any potential significant pension liability that may arise on termination.
- The financial impact on and likely shutdown of Thorneloe's operations that will follow termination of Federation Agreement and Financial Distribution Notice will amount to significant financial hardship for Thorneloe and, termination of these agreements would not materially enhance Laurentian's prospects of a viable compromise or arrangement.

TU HAS PROVABLE CLAIMS AGAINST LU

Section 32(7) of the CCAA states:

Agreements

Loss related to disclaimer or resiliation

32 (7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

As a result of the disclaimers and the termination of its main income sources, TU is in the process of winding down (other than its Theology program). As of this writing, the wind down process is currently fluid and involves the payments of on-going costs and expenses by TU from a static pool of remaining funds that it has, all of which are losses in relation to the disclaimers. Since the wind down process is on-going, TU's claims cannot be crystallized with finality as of the claims bar date and all of the loss amounts will continue to increase.

TU therefore reserves the right to amend all the figures in this Proof of Claim and to add additional claims that it is not yet aware of as it proceeds through its wind down process.

TU has the following categories of claims at this time in relation to the disclaimers:

a) Severance Payments to TU faculty and employees:

While it was operating prior to the disclaimers, TU had 40 faculty and staff. TU has had to terminate 36 employees, and has only four remaining to oversee the wind down.

As a consequence of LU's disclaimers, TU has had to pay \$851,074 to date in severance pay to its terminated faculty and staff. As noted, TU currently has only 4 staff left working who are also expected to be terminated in the future, generating additional severance costs of approximately \$630,599, for a total of \$1,481,673.

b) Additional Payment(s) to the LU Pension Plan:

While TU was operating, its employees were members of the LU Pension Plan and TU made contributions toward the service costs for those employees' accruing pension benefits. In relation to the disclaimer, LU has amended the LU Pension Plan as of July 1, 2021 to exclude TU as a "Federated or Affiliated Employer", and has also sought a special additional payment from TU to make to the pension plan. Any additional payment is currently under discussion with LU and a final amount will be a claim by TU. TU therefore files a placeholder or "marker" claim of \$600,000 at this time. This is done without any admission of liability and will change depending on the outcome of discussions with LU.

c) Receivables owing by LU to TU:

LU owes TU the transfer of funds from grants and tuition in respect of TU's courses from both the pre-CCAA and post-CCAA periods that it has not forwarded to TU, based on the Federation Agreements prior to the effective date of the disclaimers. Both of these temporal claims relate to grants and tuition in relation to TU's courses that flow through LU who is to forward the payments,

net of service fees, to TU. These funds are not at anytime the property of LU. The amount of funds owing to TU are approximately \$143,003 and \$381,780 for the pre- and post CCAA periods, respectively, for a total of \$524,783.

TU claims these amounts as a first priority trust claim, and also reserves the right to set off this amount against any payments that may be owing by TU to LU for various service costs and/or any other amounts. Alternatively, the amounts totaling \$381,780 that are owing in respect of the post-CCAA period represent equivalent Administrative Expenses which should be paid in full by LU and not as part of the pre-filing unsecured pool.

Alternatively, these are unsecured claims.

d) Retiree Health Benefits Plan ("RHBP") TU "surplus" amount:

LU sponsored the RHBP for all employees at LU, both union and non-union, including those working at the federated universities. The RHBP provided health benefit coverage on retirement. It was funded by both employer and employee contributions. LU was to deposit those contributions into a trust account and hold those funds in trust. In the affidavit of Robert Hache sworn on January 30, 2021 in support of the initial CCAA application, he stated that LU did not hold the funds in a trust account but instead deposited the RHBP contributions into its general account (see paragraphs 168 to 170).

TU states, *inter alia*, that LU committed a breach of trust with respect to the RHBP funds for which its Board of Governors and any others acting in a director or officer equivalent capacity, among others, are liable.

LU terminated the RHBP on April 30, 2021 for both employees and retirees.

TU was not the sponsor of the RHBP. TU functioned as an administrative "go-between" LU and for its own employees to facilitate the RHBP for them. TU would collect an amount from its employees' pay via payroll deduction and, along with its own contribution, remit those amounts to LU who would provide the benefit to eligible employees on their retirement.

TU claims against LU for the terminated RHBP

As of the date of the termination of the RHBP, the monitor has advised that it determined there is a surplus of the contributions in respect of TU and that approximately \$23,000 is owing back to TU. Subject to verification of that amount and any changes that may be warranted, TU claims such a surplus amount as a first priority trust claim, and also reserves the right to set off this amount against any payments that may be owing by TU to LU for various service costs and/or any other amounts.

Alternatively, this is an unsecured claim.

Employee claims against LU for the terminated RHBP

In addition, there are claims of the employees that arise as a result of LU's termination of the RHBP and the loss of those retiree benefits to them. TU understands that LUFA is advancing a claim against LU for the loss of the RHBP on behalf of all LUFA members, including the LUFA members who were employed with the federated universities such as TU.

A similar claim needs to be advanced for the impacted non-LUFA members to ensure that the non-LUFA employees' RHBP claims are advanced.

e) Separation costs:

As noted, LU and TU functioned together for over 60 years as "one university". They were highly integrated in all ways including academically, administratively and logistically. The termination of the relationship with TU by LU via the disclaimers has given rise to a variety of costs relating to the separation of TU from LU that will involve large outlay of funds and effort by its staff. Those costs include additional costs in relation to capital equipment and related infrastructure for internet, server and telecom facilities for TU's buildings, software licenses, cybersecurity and internet security insurances, door access, systems, fees/costs for initial assessment and provision of these services, opening new accounts with utilities and expenses in relation to other facilities at TU.

While TU is in the process of assessing these costs as part of its wind down, they have not yet been finalized as of this date. It is estimated that separation costs will involve an outlay of approximately \$100,000. Certain staff members at TU are working to affect the separation from LU on a granular level, thus, an appropriate allocation of their ongoing salary cost will form part of the separation costs. This estimate may be revised based on actual expenses incurred by LU in relation to the separation process.

f) Legal and advisor costs:

As a result of LU seeking CCAA protection, the court-imposed mediation, and opposing LU's disclaimer of the Federation Agreements, LU had to retain legal counsel and financial and actuarial advisers to respond to LU. TU claims those costs against LU. The current estimate of those costs is \$1,500,000 and there will be additional costs as the CCAA proceeds to its termination, for an aggregate amount that could be in the range of \$1,850,000. Copies of invoices to date can be provided.

g) Insolvency filing costs:

As noted in the Farber Report, TU is expected to file an insolvency proceeding in the future. The estimated professional costs (trustee and legal counsel) for such a proceeding are \$3500,000.

h) Loss to TU's academic and commercial value:

Prior to the disclaimers, TU was a respected, fully functional university that was integrated with LU for over 60 years. TU's courses were popular with students and highly regarded in the

academic community. A number of its faculty taught specialized programs, were nationally and internationally recognized, and regularly invited to speak at academic seminars.

The disclaimers and the termination of Federation Agreements and the cancellation of the grants and tuition has divested TU of its ability to offer courses to LU students. As explained in the affidavits filed in the CCAA proceeding, TU was set up with LU in the early 1960's to operate as one university with LU, and it does not have the ability or infrastructure to operate outside of LU.

As a result of the disclaimers, TU has suffered a loss of the bulk amount of its revenues from tuition and grants generated by the programs/courses that it offered (except for nominal revenues from its Theology program). These revenue sources for Thorneloe were essential to sustain TU's ongoing business operations and to meet its operating costs and liabilities.

As noted, the disclaimers have also necessitated the termination of the faculty who were employed by TU to teach the programs, as well as staff, and has resulted in TU losing value of its intellectual property of its academic programs, the development of which involved investment of a significant amount of time and resources by TU. TU's ability to use its buildings (which it owns) and other assets and funds, that were employed to carry on its operations has also been impaired due to the disclaimers. Severance costs and other wind down costs related to the termination and LU's CCAA proceedings have been incurred, as referenced above.

In sum, the termination of the Federation Agreement has permanently caused a loss to the value of TU's operations, resulting in a permanent loss of business value for TU.

TU has retained Farber Corporate Finance Inc. to quantify the business value of TU as a going concern to support its loss of business value claim herein, who advise that their valuation report will be completed shortly. We will provide this report as soon as possible.

While the valuation report is being finalized, TU claims the amount of \$13.6 million for loss of business value as a "marker" claim amount, which is the amount reflected in Farber's Expert Report entitled "Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University" dated April 19, 2021 that was filed in the CCAA proceeding. This report quantifies the financial impact of termination of the Federation Agreement on TU. The summary chart from this Report is reproduced below.

Particulars	Loss based on adjusted 2019 Financial Statements	Present Value of Future Loss Over Next 5 Years (discounted @ 3%)**	Notes
Non-Recurring Costs & Liabilities:			
Pension Liability and PBGF	Unknown	Unknown	1, 2
Severance Payments	1,423,686	1,423,686	1, 3
Statutory Termination Pay in lieu of Notice	59,663	59,663	1
Professional fees	500,000	500,000	1, 4
Prior Receivables not paid by LU	107,156	107,156	1, 5
Disentanglement costs	100,000	100,000	1, 6
Subtotal of Non-Recurring Costs & Liabilities (excluding pension liability)	2,190,505	2,190,505	
Recurring Costs & Liabilities			
Loss of Revenue:			
Grants	568,771	2,604,805	
Tuition Fees	1,710,095	7,831,734	
Donations and Other Grants	37,783	173,035	
Investment Income	183,000	838,086	
Residence Fees	215,470	986,790	7
Miscellaneous Income	5,416	24,805	8
Less: LU Service Fee	(358,086)	(1,639,929)	
Incremental annual costs:			
IT Service Charge	144,179	660,299	9
Subtotal of Recurring Costs & Liabilities	2,506,628	11,479,624	
TOTAL (prior to pension liability)	4,697,133	13,670,129	
NOTES:			
** The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value future loss over the next 5 years does not include adjustment for anticipated growth in revenues/ increase in costs.			
(1) These are non-recurring payments/receipts and have not been discounted for net present value calculation.			
(2) The pension liability is presently unknown but may potentially be a large liability that may arise on the termination of the Federation Agreement.			
(3) Severance payment has been estimated based on amount payable under common law.			
(4) Professional service costs are an estimate only and may vary depending on the course of proceedings.			
(5) Prior receivables owed by LU to TU assumed to be collected and held in trust for TU but to be conservative have been included in this schedule.			
(6) Disentanglement costs are an estimate of costs in relation to separation of services and other utilities including hydro meters, door security system, fire safety systems and supervision of same.			
(7) Estimate 50% loss in residence revenue because of the meal plan requirement. Residence revenue is estimated at \$7,430 pa per student with a total of 58 available residences of which only 50% are estimated to be occupied.			
(8) Misc. income comprises of parking and vending machine revenue. Assumed 50% reduction in 2019 parking revenue on account of students not taking TU courses and complete loss of vending machine commission.			
(9) It is assumed that TU will continue to avail computer services provided by LU and pay its share of the costs.			

SCHEDULE "B"

FARBER



Thorneloe University

Report on Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University

April 19, 2021

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1.0 INTRODUCTION

- 1.1. A. Farber & Partners Inc., a member of Farber Group ("**Farber**") was retained by the law firm of Koskie Minsky ("**KM**") on behalf of its client Thorneloe University ("**Thorneloe**" or "**TU**"), to review:
 - the Federation Agreement between Laurentian University ("**Laurentian**" or "**LU**") and Thorneloe dated 1962 ("**Federation Agreement**"); and
 - the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, that amended the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 between Laurentian and Thorneloe (the "**Financial Distribution Notice**"),
 and provide an opinion on:
 - whether in Farber's expert opinion termination of the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the Companies' Creditors Arrangement Act ("**CCAA**") would result in significant financial hardship to Thorneloe, and whether or not termination of these agreements would enhance Laurentian's prospects of a viable compromise or arrangement.
- 1.2. In order to perform this engagement, I relied on other Farber professionals with extensive experience in insolvency and restructuring, all of whom worked under my direct supervision and control. I have relied on the work of the team to support my review of information related to this matter, and references to "our" and "we" recognize this reliance.
- 1.3. The hourly rates charged by Farber for professional services provided in this matter range from \$375 to \$650 for staff and my time is billed at \$650 per hour.
- 1.4. I was asked to provide this expert report in connection with a notice of disclaimer issued by Laurentian to Thorneloe on April 1, 2021 ("**Disclaimer Notice**") disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to Section 32(1) of the CCAA in the CCAA application filed by Laurentian to restructure its affairs ("**CCAA Proceedings**") and as to whether factors required to be considered by Court in ordering disclaimer of a contract as listed in section 32(4) of the CCAA have been satisfied.
- 1.5. I reserve the right to revise and supplement my analyses, opinions and report to the extent additional relevant information becomes available, or to the extent permitted by the Court in this case.
- 1.6. Attached as **Appendix 1** to this report is my Acknowledgment of Expert's Duty in accordance with Form 53 of the Courts of Justice Act.

2.0 SUMMARY CONCLUSIONS

- 2.1. Based on my review of the documents and evidence produced, including discussions with management, financial and legal advisors of Thorneloe, and from my analyses, education, experience and training, it is my opinion, for reasons more fully articulated in the body of this report, that:

- Termination of the Federation Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe itself will have to resort to a formal insolvency process. If terminated, Thorneloe will no longer be eligible to receive government grants which comprise one of its main revenue streams. The financial losses to Thorneloe on account of termination are estimated to be approximately \$13.7 million over the next five years;
- Given the size and operations of Thorneloe as compared to Laurentian, termination of the Federation Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process and is unlikely to enhance prospects of Laurentian making a viable Plan in the CCAA Proceedings.

3.0 PROFESSIONAL QUALIFICATIONS AND BACKGROUND OF ALLAN NACKAN

- 3.1. I am a Certified Public Accountant ("CPA") and a Licensed Insolvency Trustee ("LIT"), with approximately 5 years' experience in Public Accounting and 31 years' experience Insolvency and Restructuring. I also hold the specialty designation as a Chartered Insolvency and Restructuring Professional ("CIRP") from CAIRP.
- 3.2. I am a partner of Farber since 2000 and co-leader of the firm's restructuring practice. I also lead Farber's international and cross-border initiatives and am a director of BTG Global Advisory. Farber has approximately 250 employees in multiple offices across Canada.
- 3.3. My practice is diverse and includes assignments such as acting as Monitor, Receiver and Trustee in insolvency proceedings; acting as financial advisor for Representative Counsel, creditor committees, lenders, regulators and other stakeholders, including in significant CCAA cases such as Nortel Networks Corp, U.S. Steel Canada and Sears Canada; due diligence and monitoring engagements; fraud and forensic proceedings to trace and recover assets in US, Canada and internationally.
- 3.4. I hold graduate and undergraduate business and accounting degrees from University of Witwatersrand in Johannesburg, South Africa.
- 3.5. I am a Fellow of INSOL International (since 2012), having successfully completed the Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. I was admitted as a member of the Insolvency Institute of Canada in 2017.
- 3.6. My Curriculum Vitae is attached as **Appendix 2** to this Report, which sets out additional information about my qualifications.

4.0 SCOPE OF REVIEW

- 4.1. The conclusions set out herein are based on my review of documents and information set out in **Appendix 3** to this report and supplemented by various discussions with management and advisors of Thorneloe.
- 4.2. Our conclusions rely on historical audited financial statements of Thorneloe prepared by KPMG LLP, discussions held with and information provided by Thorneloe's

management/staff, and the court materials filed by Laurentian in the CCAA Proceedings including reports issued by Ernst & Young Inc. as proposed monitor and monitor for Laurentian (“**Monitor**”); affidavit of Dr. Robert Haché sworn on January 30, 2021 (“**Haché Affidavit**”) filed in support of the initial CCAA application and related correspondence/notices issued.

- 4.3. We reserve the right to revise or supplement our analysis, opinion and report to reflect further findings should we be provided with additional documentation or information.
- 4.4. Our analysis and this report should be read in conjunction with our disclaimer included in **Appendix 6** of this report.

5.0 BACKGROUND¹

- 5.1. My report has been prepared in connection with the Disclaimer Notice issued by Laurentian to Thorneloe on April 1, 2021 disclaiming the Federation Agreement and the Financial Distribution Notice pursuant to section 32 of the CCAA in the CCAA Proceedings.
- 5.2. We have drawn the following facts from our review of the materials provided as detailed in **Appendix 3**.

Thorneloe’s Federation Arrangement with Laurentian

- 5.3. Thorneloe was established in 1961 with historical roots and affiliation to the Anglican Church of Canada with degree-conferring powers. Being a religious university, Thorneloe is not eligible to receive funds from provincial grants available to educational institutions.
- 5.4. Pursuant to its establishment, Thorneloe entered into the Federation Agreement with Laurentian in 1962 whereby Thorneloe amalgamated with Laurentian to form a single university and ceded its ability to confer degree, independently as a university, to Laurentian for all courses except for courses offered under its School of Theology program to small number of students. The federation arrangement allowed Thorneloe to access provincial grant funding that would be paid to Thorneloe through Laurentian in relation to students taking Thorneloe courses. Laurentian has a similar federated arrangement with Huntington University and University of Sudbury. A copy of the Federation Agreement is attached as **Appendix 4**.
- 5.5. Thorneloe offers several programs to students including students taking courses at Laurentian through its Ancient Studies, Religious Studies, and Women’s, Gender, and Sexuality Studies departments that are related with Laurentian’s Faculty of Arts.

¹ The events discussed in the Background section of this report are not intended to represent an exhaustive history of all important facts surrounding the federation of Thorneloe with Laurentian.

Thorneloe also offers certificates, diploma and bachelor's degree programs in Theology through its School of Theology.

- 5.6. Thorneloe and Laurentian work in a highly integrated framework as is evident from, *inter alia*, the following:
 - 5.6.1. Pursuant to the Federation Agreement, Thorneloe's degree-conferring powers have been suspended and all students taking courses at Thorneloe (except for the School of Theology courses) receive course credits towards a degree offered by Laurentian;
 - 5.6.2. The Grant Distribution and Service Fees arrangement has existed between Thorneloe and Laurentian since 1993 as subsequently amended by the Financial Distribution Notice which sets out the basis for distribution of government grants that are administered by Laurentian to Thorneloe and payment of service fees by Thorneloe to Laurentian for services provided by Laurentian. Copies of the Proposed Grant Distribution and Services Fees agreement dated November 10, 1993 and Financial Distribution Notice dated May 1, 2019 are attached as **Appendix 5**;
 - 5.6.3. Thorneloe pays 15% of its tuition fees and grants, and approximately 36% material fees received from students enrolled in Thorneloe courses to Laurentian. These amounts are deducted "off the top" by Laurentian;
 - 5.6.4. Further, Laurentian also retains all grants in relation to Laurentian students taking electives at Thorneloe;
 - 5.6.5. Thorneloe's pensions and group benefits are administered through Laurentian and its teaching staff are represented by Laurentian University Faculty Association;
 - 5.6.6. Thorneloe also contributes to Laurentian University Research Fund;
 - 5.6.7. Thorneloe is located on Laurentian's campus and pedestrian access to Thorneloe is through Laurentian;
 - 5.6.8. Thorneloe's buildings are situated on land owned by Laurentian that has been leased to Thorneloe pursuant to a long-term lease agreement dated October 26, 1964 ("**Lease Agreement**") between Laurentian as lessor and Thorneloe as lessee, for a term of 99 years with a further renewable term of 99 years;
 - 5.6.9. All utilities including hydro, IT infrastructure, security, and sewage are shared between Laurentian and Thorneloe; and
 - 5.6.10. Thorneloe provides substantial academic, administrative and governance support to Laurentian in its operations as more fully described in the Affidavit of Dr. John Gibaut.
- 5.7. The aforesaid arrangement has existed between Thorneloe and Laurentian for over 60 years until, on April 1, 2021, two months after the initial CCAA filing, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

Circumstances Leading to the Issuance of Disclaimer Notice

- 5.8. There are several factors that led to Laurentian's insolvency as determined and detailed in the Monitor's reports. As detailed in the report of the proposed monitor (subsequently appointed as the Monitor) dated February 1, 2021, the factors that led to Laurentian's insolvency included, *inter alia*, the following:
 - 5.8.1. Laurentian has been suffering recurring losses and accumulating deficits over a significant number of years that were first identified in the year 2008-09. As per the Haché Affidavit, the accumulated operational deficits increased from approximately \$8.2 million in the financial year 2014-15 to approximately \$20 million in the financial year 2019-20²;
 - 5.8.2. Significant capital expenses were incurred by Laurentian on unsuccessful modernization and expansion programs for its campus including setting up a Barrie campus that had to be subsequently closed. These expansion programs were financed by way of long-term loans and did not yield desired increase in student enrollment and revenue saddling Laurentian with large liabilities;
 - 5.8.3. Laurentian continued to provide financially unsustainable programs that had low student enrolment without revising its course offerings;
 - 5.8.4. Provincially mandated reduction in domestic tuition fees by 10% for the year 2019-20 which continued in the year 2020-21; and
 - 5.8.5. Loss of ancillary revenue from residences, parking facilities, meal plans and facilities offered to students due to impact of COVID-19 pandemic.
- 5.9. Thorneloe has participated in the Laurentian's CCAA-led mediation proceedings, but these proceedings did not lead to a mutually agreeable arrangement. The details of the discussions at the mediation proceedings are subject to a strict non-disclosure agreement and accordingly have not be discussed herein.
- 5.10. On April 1, 2021, Laurentian issued the Disclaimer Notice to disclaim the Federation Agreement, and the Grant Distribution and Service Fees arrangement as amended by the Financial Distribution Notice.

² Para 8 of the Haché Affidavit.

6.0 MY ANALYSIS AND FINDINGS

General principles considered

- 6.1. Section 32 of the CCAA, allows a debtor company to disclaim or resiliate any contract or agreement, by way of notice, to which the company is a party after commencement of CCAA proceedings. Under Section 32(2) of the CCAA, such a notice can be challenged by the counterparty to the contract sought to be disclaimed, by applying to Court within 15 days. Pursuant to section 32(4) of CCAA, in deciding whether to order to disclaim or resiliate an agreement, the Court is required to consider *inter alia* the following factors:
 - “(a) whether the Monitor approves the disclaimer;*
 - (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and*
 - (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.”*
- 6.2. In this regard, the report details the potential impact of termination of the Federation Agreement and the Financial Distribution Notice on Thorneloe’s operations and whether such termination would enhance the prospects of Laurentian making a viable compromise or arrangement i.e. we have focused on the factors (b) and (c) above. We understand that the Monitor is approving the disclaimer.

Impact of Termination of the Federation Agreement and the Financial Distribution Notice

Significant Financial Hardship on Thorneloe

- 6.3. The financial impact on Thorneloe of termination of the Federation Agreement and Financial Distribution Notice is discussed in the paragraphs below.
- 6.4. The termination of the Federation Agreement will divest Thorneloe of its ability to offer courses and programs to students that can be counted as credits towards Laurentian degrees. This will result in a complete loss of tuition fee revenue for Thorneloe from Thorneloe courses offered to Laurentian students.
- 6.5. Thorneloe will also no longer be eligible to receive government grants which comprises one of the main revenue streams for Thorneloe that allows it to carry on its operations. It is estimated that Thorneloe will suffer an annually recurring loss of revenue and incremental annual costs of at least \$2.5 million per annum, which is a significant loss to Thorneloe.
- 6.6. Thorneloe does not qualify for government grants and without receipt of income from government grants and tuition fees for programs/courses offered to Laurentian students, Thorneloe cannot sustain its operations or continue paying its ongoing costs and liabilities.

- 6.7. Thorneloe does not have the ability or infrastructure to operate outside of the Laurentian ecosystem. Termination of the Federation Agreement and Financial Distribution Notice was sprung upon Thorneloe two months after the initial CCAA filing and will essentially result in putting Thorneloe out of business because of its inability to teach students and receive revenues after termination.
- 6.8. This will necessitate termination of employment by Thorneloe of all of its 28 employees, including 7 full-time faculty members, 12 sessional faculty members, 6 administration staff members and 3 casual staff members (students and academic support staff). A number of Thorneloe's faculty are long serving members with a service tenure of 14 to 21 years. These members will lose their employment and their benefits will also be significantly impaired as a result of any proposed modification to the Pension and Benefit plan on account of termination of the Federation Agreement.
- 6.9. This will result in Thorneloe incurring substantial shut down costs that are estimated to be approximately \$2.2 million (excluding the pension liability) primarily on account of the following:
 - 6.9.1. Severance and termination payments estimated to be approximately \$1.5 million;
 - 6.9.2. Disentanglement expenses and professional fees to the extent of approximately \$700,000; and
 - 6.9.3. the Pension liability may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement.
- 6.10. The extent of cash outflows that Thorneloe will suffer on account of termination costs and liabilities will deplete its reserve funds, consequently resulting in loss of its recurring revenues of approximately \$180,000 per annum from investment income.
- 6.11. As mentioned above, Thorneloe and Laurentian operate in a highly integrated framework, so termination would also require the parties to incur substantial disentanglement costs for separation of services (such as IT, utilities, security) and supervision of same.
- 6.12. Further, upon termination, there would be potential loss of value and complications with realization of fixed assets owned by Thorneloe, comprising Thorneloe's academic, residential and other buildings. The land on which Thorneloe's fixed assets are situated has been leased to Thorneloe as lessee by Laurentian as lessor pursuant to the long-term Lease Agreement for a term of 99 years that is renewable for a further term of 99 years subject to the terms therein.
- 6.13. Thorneloe has invested a significant amount of effort and knowledge in the creation and development of its curriculum and courses. The value of this intellectual property will be impaired if it is unable to earn revenues from these courses. While not quantified in this report, these losses are a significant additional category of damages that Thorneloe will suffer as a result of termination.
- 6.14. Thorneloe is a creditor for approximately \$700,000 in respect of grants and tuition fees collected by Laurentian in respect of Thorneloe courses and not yet remitted to Thorneloe, which relies on this funding to pay its current an ongoing costs. The details of the amounts owed to Thorneloe are provided in the table below:

Particulars	Gross \$	LU's Fee	Net \$	NOTES
Due on March 31, 2021				
Student wage subsidy	1,623	-	1,623	
Facility Renewal Grant	28,250	-	28,250	
Due on April 30, 2021				
Prior years receivables: Gross Student Fees	107,157	-	107,157	
Gross tuition fees outstanding for Spring 2020 Semester	22,420	3,363	19,057	1
Gross tuition fees outstanding for Winter 2021 Semester	454,054	68,108	385,946	1
Gross 2020-21 FW Material Fees	75,182	22,555	52,627	2
Donations received by LU and not yet forwarded to Thorneloe	2,000	-	2,000	
Grants outstanding (semi-monthly instalment)	15,930	-	15,930	
TOTAL	706,616		612,590	
NOTES:				
(1) 15% service fee has been applied to the gross amount to calculate the net amount				
(2) 30% service fee has been applied to the gross amount to calculate the net amount				

- 6.15. While Thorenloe will have a claim in Laurentian's CCAA should the termination of these agreements prevail, the claim will be small in relation to Laurentian's claims pool and the anticipated payout to unsecured creditors in Laurentian's CCAA plan will likely be insignificant and not adequate compensation for losses and damages sustained by Thorneloe.
- 6.16. Thorneloe will have to contend with significant employee and pension liabilities, which will likely necessitate a formal insolvency filing of its own under the Bankruptcy and Insolvency Act or CCAA.
- 6.17. The adverse impact on Thorneloe's financial condition upon termination of the Federation Agreement and the Financial Distribution Notice is detailed in the table below:

Particulars	Loss based on adjusted 2019 Financial Statements	Present Value of Future Loss Over Next 5 Years (discounted @ 3%)**	Notes
Non-Recurring Costs & Liabilities:			
Pension Liability and PBGF	Unknown	Unknown	1, 2
Severance Payments	1,423,686	1,423,686	1, 3
Statutory Termination Pay in lieu of Notice	59,663	59,663	1
Professional fees	500,000	500,000	1, 4
Prior Receivables not paid by LU	107,156	107,156	1, 5
Disentanglement costs	100,000	100,000	1, 6
Subtotal of Non-Recurring Costs & Liabilities (excluding pension liability)	2,190,505	2,190,505	
Recurring Costs & Liabilities			
Loss of Revenue:			
Grants	568,771	2,604,805	
Tuition Fees	1,710,095	7,831,734	
Donations and Other Grants	37,783	173,035	
Investment Income	183,000	838,086	
Residence Fees	215,470	986,790	7
Miscellaneous Income	5,416	24,805	8
Less: LU Service Fee	(358,086)	(1,639,929)	
Incremental annual costs:			
IT Service Charge	144,179	660,299	9
Subtotal of Recurring Costs & Liabilities	2,506,628	11,479,624	
TOTAL (prior to pension liability)	4,697,133	13,670,129	
NOTES:			
** The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value future loss over the next 5 years does not include adjustment for anticipated growth in revenues/ increase in costs. (1) These are non-recurring payments/receipts and have not been discounted for net present value calculation. (2) The pension liability is presently unknown but may potentially be a large liability that may arise on the termination of the Federation Agreement. (3) Severance payment has been estimated based on amount payable under common law. (4) Professional service costs are an estimate only and may vary depending on the course of proceedings. (5) Prior receivables owed by LU to TU assumed to be collected and held in trust for TU but to be conservative have been included in this schedule. (6) Disentanglement costs are an estimate of costs in relation to separation of services and other utilities including hydro meters, door security system, fire safety systems and supervision of same. (7) Estimate 50% loss in residence revenue because of the meal plan requirement. Residence revenue is estimated at \$7,430 pa per student with a total of 58 available residences of which only 50% are estimated to be occupied. (8) Misc. income comprises of parking and vending machine revenue. Assumed 50% reduction in 2019 parking revenue on account of students not taking TU courses and complete loss of vending machine commission. (9) It is assumed that TU will continue to avail computer services provided by LU and pay its share of the costs.			

6.18 TABLE 1

- 6.19. The calculations presented above are an estimate only and the actual losses sustained by Thorneloe may be higher than the estimates. The net present value impact of termination over the next 5 years has been shown for illustrative purposes only to demonstrate the losses to Thorneloe over the next 5 years. There was every expectation that Thorneloe would continue to operate with LU as a federation in perpetuity, in which case actual losses will exceed the above estimates by many multiples. Additional damages would also result in respect of its intellectual property, which are not quantified in this report.
- 6.20. It is estimated that as a consequence of termination, Thorneloe will suffer significant financial losses of approximately \$13.7 million over the next 5 years, comprising of approximately \$2.2 million non-recurring losses due to termination costs/liabilities (which does not include the pension liability that may be a significant, as yet undetermined, potential liability that may arise on the termination of the Federation Agreement) and approximately \$2.5 million of recurring losses due to loss of annual revenues and incremental costs. The net present value impact of the recurring losses is estimated to be approximately \$11.5 million over the next 5 years.

Thorneloe's Immateriality in Laurentian's Overall Restructuring Scheme

- 6.21. Termination of the Federation Agreement would have an immaterial impact on the current cost-cutting measures and restructuring efforts of Laurentian, as demonstrated from the financial metrics presented below. Disclaimer of the Federation Agreement will not enhance the prospects of a viable compromise or arrangement being made by Laurentian, as Thorneloe is immaterial to its overall restructuring.
- 6.22. In the financial year 2020, Thorneloe received approximately \$568,770 in grants which is a mere 0.66% of the total grants of approximately \$86 million received by Laurentian.
- 6.23. Thorneloe's revenues from tuition fees in 2020 were approximately \$1.5 million whereas Laurentian received \$50.5 million in tuition fees. The ancillary revenue earned by Thorneloe in 2020 of approximately \$381,000 is only 2.72% of the ancillary revenue of approximately \$14 million earned by Laurentian.
- 6.24. Thorneloe employs only 7 full time faculty whereas Laurentian employs 355 full-time faculty members. The salary and benefits paid by Thorneloe to its faculty members in 2020 was approximately \$2.4 million whereas Laurentian paid \$134 million to its faculty members during the same period.
- 6.25. The immateriality of Thorneloe's operations as compared to LU's operations is summarized in the table below:

For the year 2020*	Thorneloe (TU)	Laurentian (LU)	TU as % of LU	Notes
Grants received	\$ 568,771	\$ 86,420,000	0.66%	1
Tuition Fees	\$ 1,570,964	\$ 50,500,000	3.11%	
Material Fees	\$ 65,623			
Subtotal	\$ 2,205,358	\$ 136,920,000	1.61%	
Less : Service Fee	(358,086)			
Net Grants and Tuition Fees	\$ 1,847,272	\$ 136,920,000	1.35%	
Ancillary Revenue	\$ 381,000	\$ 14,000,000	2.72%	
Salaries and Benefits	\$ 2,440,000	\$ 134,000,000	1.82%	
Full-time Faculty	7	355	1.97%	
NOTES:				
* The source of information in this table is Thorneloe's financial statements and the financial statements shared by the applicant.				
1. Of the total grants received, \$90,601 was received on account of one-time sustainability grants that will not repeat. These include Northern Sustainability Grant of \$76,615 and COVID Grant of \$13,986.				

- 6.26. As is evident from the above table, termination of the Federation Agreement and the Financial Distribution Notice will not materially enhance the financial prospects of Laurentian making a viable compromise or arrangement.
- 6.27. Based on our review and as more fully discussed above, termination would cause terminal fiscal damage to Thorneloe such that its very existence would be jeopardized, necessitating a formal insolvency filing by Thorneloe.
- 6.28. In contrast, continuation of the Federation Agreement and Financial Distribution Agreement will allow Thorneloe to sustain its operations and related costs while contributing a significant portion of its tuition fees and grant revenues to Laurentian and paying Laurentian applicable service fees. It will also facilitate uninterrupted continuation of courses and studies for students at Thorneloe, avoid any hardship to Thorneloe's staff on account of termination of employment, and prevent significant pension liabilities that may arise for Thorneloe upon termination.

7.0 CONCLUSION

- 7.1. Accordingly, and as discussed above, it is my opinion that:
- Thorneloe will not be eligible to receive public funding in the form of grants if the termination is allowed. The financial losses to Thorneloe on account of termination are estimated to be approximately \$13.7 million over the next five years, excluding any potential significant pension liability that may arise on termination.

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- The financial impact on and likely shutdown of Thorneloe's operations that will follow termination of Federation Agreement and Financial Distribution Notice will amount to significant financial hardship for Thorneloe and, termination of these agreements would not materially enhance Laurentian's prospects of a viable compromise or arrangement.



Allan Nackan, CPA, CA, CIRP, LIT

April 18, 2021

Date

Appendices

APPENDIX 1 ACKNOWLEDGMENT OF EXPERT'S DUTY*Form 53**Courts of Justice Act***ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is Allan Nackan. I live in Thornhill, in the Province of Ontario.
2. I have been engaged by Koskie Minsky on behalf of its client Thorneloe University to provide evidence in relation to the court proceeding referenced in the text of my Report.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a) to provide opinion evidence that is fair, objective and non-partisan;
 - b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date April 18, 2021

Signature  _____

Note: This Appendix is provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*

APPENDIX 2 CURRICULUM VITAE OF ALLAN NACKAN CPA, CA, CIRP, LIT

Education & Professional Qualifications

- Bachelor of Commerce, University of Witwatersrand, South Africa, 1983
- Bachelor of Accounting, University of Witwatersrand, South Africa, 1985
- Chartered Accountant (CA), South African Institute of Chartered Accountants, 1988
- Chartered Accountant (CA), Canadian Institute of Chartered Accountants, 1990
- Chartered Insolvency and Restructuring Professional (CIRP), Canada, 1995
- Licensed Insolvency Trustee (LIT), Canada, 1995
- Fellow of INSOL International, 2012
- Chartered Professional Accountant (CPA), Institute of Chartered Accountants of Ontario
- Member of Insolvency Institute of Canada, 2017

Profile

Allan Nackan is a Partner at Farber and co-leader of the Restructuring and Financial Advisory practice of Farber Financial Group.

His practice focuses on corporate insolvency and restructuring, distressed financial advisory services, cross-border restructuring, fraud investigations and forensic accounting.

Allan is a Fellow of INSOL International, having successfully graduated from their Global Insolvency Practice Course, which is the pre-eminent advanced educational qualification focusing on international insolvency. Allan is one of only eight INSOL Fellows in Canada.

Allan is actively involved in and leads Farber Financial Group's international and cross-border initiatives. He is a director and current Chair of BTG Global Advisory, an international alliance of specialist independent insolvency and financial advisory firms across the globe of which Farber was a founding member—see www.btgga.com.

He acts as court-appointed receiver and interim receiver; as monitor or financial advisor in Companies' Creditor Arrangement Act (CCAA) and Chapter 11 proceedings; as a Trustee under Bankruptcy & Insolvency Act (BIA) proposals; and as a Trustee in Bankruptcy for a wide variety of corporations and their creditors. He applies his analytical skills to help major financial institutions and other lenders with risk and feasibility studies and fulfills various financial advisory roles.

Notable assignments include: acting as financial advisor to FSCO as administrator of the Ontario Pension Benefit Guarantee Fund in CCAA/Chapter 11 filings of Nortel Networks Corp. and Sears Canada Inc.; acting as financial advisor to Representative Counsel to non-union retirees and active employees of U.S. Steel Canada Inc. (a.k.a. Stelco); restructuring and/or liquidation of retail chains such as Tabi International, Clothing for Modern Times (Urban Behaviour & Costa Blanca), The Tall Girl Shop and Movie Gallery Canada (aka Hollywood Video); the restructuring and sale of the largest movie production studio in Toronto; and successfully managing the operations, restructuring or liquidation of numerous manufacturing, distribution, retail, technology, real estate and media businesses.

Broad industry experience also includes cosmetics, retail, textiles, automotive parts, car dealerships; automobile leasing, transport & logistics, metals and mining, media, advertising, printing, software, music, and food distribution industries. Practice specialties also include retail insolvencies, securities firms, forensic accounting & fraud investigations, and cross border restructuring.

Allan's cross-border insolvency experience includes acting as financial advisor to the Superintendent of Financial Services representing Ontario Pension Benefit Guarantee Fund, a major stakeholder in CCAA/Chapter 11 filings by Nortel Networks Limited, which operated in 140 countries and filed concurrent insolvency proceedings in Canada, USA and UK; Chapter 15 proceedings for liquidation of US retail operations of The Tall Girl Shop; and representing a numerous US-secured lenders in Canadian insolvency proceedings.

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Allan acted as Court-appointed Receiver and Trustee in Bankruptcy of securities firms, and as such was involved in *Ashley vs. Marlow Group Private Portfolio Management Inc.*, a precedent setting case in Ontario on Part XII of the Bankruptcy and Insolvency Act, governing securities firm bankruptcies. He has led numerous insolvency and forensic proceedings to trace and recover assets in US, Canada, the Caribbean and internationally.

Allan has co-chaired numerous educational seminars for professional associations and has spoken and published on topics including: “Cultural Factors Impacting Cross-Border Workouts”; “Challenges in Insolvencies of Multinational Enterprise Groups—A Nortel and OSX case study”; “Retail Industry & Restructuring”; “Practical Strategies for Dealing with Employee Claims in Restructuring Proceedings”; “The use of Stalking Horse Proceedings to Maximize Value in Insolvency Workouts in United States of America and Canada”; “Fraud: Prevention and Recovery”; “Know Your Client/Due Diligence”; and “A Practical Guide to Survive & Thrive”. He has published numerous articles on insolvency and restructuring as well as forensic accounting and fraud investigations in publications such as *Law Times*, *Secured Lender*, *Rebuilding Success*, *Advanced Manufacturing*, *The Bottom Line*, *Plant magazine*, and *The Globe & Mail*.

Allan was Past-President of the Ontario Association of Insolvency & Restructuring Professionals and is an active participant on the Commercial List Users Committee sub-committee that drafts Model Orders used in insolvency proceedings. He is also an active participant on various INSOL International committees.

APPENDIX 3 DOCUMENTS AND INFORMATION REVIEWED**Documents and Information:**

- Historical Audited Financial Statements of Thorneloe
- Court materials including Monitor's Reports and 13-week cash flow projections filed in the CCAA Proceedings
- Affidavit of Dr. Robert Hache sworn on January 30, 2021
- Federation Agreement between Laurentian and Thorneloe dated 1962
- Proposed Grant Distribution and Services Fees agreement between Laurentian and Thorneloe dated November 10, 1993
- Financial Distribution Notice dated May 1, 2019
- Lease agreement between Laurentian as lessor and Thorneloe as lessee dated October 26, 1964
- Information received pursuant to discussion with Thorneloe management and staff

Websites:

- Website of Thorneloe University www.thorneloe.ca/

Legal Statutes:

- *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended s32

**APPENDIX 5 PROPOSED GRANT DISTRIBUTION AND SERVICES FEES AGREEMENT AS
AMENDED BY THE FINANCIAL DISTRIBUTION NOTICE**

APPENDIX 6 DISCLAIMER

Our scope does not constitute an audit conducted in accordance with generally accepted auditing standards, an examination of internal controls or other attestation or review services in accordance with standards established by the Canadian Institute of Chartered Accountants (“CICA”). Accordingly, we do not express an opinion or any other form of assurance on the Financial Statements of Thorneloe or any financial or other information, or operating and internal controls of Thorneloe.

Our work was based primarily on information supplied by Thorneloe and its advisors and carried out on the basis that such information is accurate and complete. Thorneloe’s information will not be subject to checking or verification procedures, except to the extent expressly stated to form part of the scope of work.

With respect to prospective financial information relative to the opportunity, we will not examine, compile or apply agreed-upon procedures to such information in accordance with standards established by the CICA, and we will not express any assurance of any kind on such information. We will not assist in the development of any assumptions therein. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. We take no responsibility for the achievement of predicted results.



December 17, 2021

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2819
ahatnay@kmlaw.ca

Via E-Mail

Sharon Hamilton
Ernst & Young Inc.
CCAA Monitor of Laurentian University
100 Adelaide St. West, P.O. Box 1
Toronto, ON M5H 0B3

Dear Ms. Hamilton:

**Re: Laurentian University CCAA, Court File No. CV-21-656040-00CL
Proof of Claim of Thorneloe University**

We are writing further to the Proof of Claim form we submitted on behalf of our client, Thorneloe University in the Claims Process of Laurentian University, and in particular, with respect to the claim amount for the loss to Thorneloe's academic and commercial value caused by the disclaimers issued by Laurentian under section 32 of the CCAA in respect of its agreements with Thorneloe. At the time of the claim filing, we included an estimated amount for the loss to Thorneloe's academic and commercial value in the amount of \$11,479,624, subject to change pending the preparation of a final valuation report by Farber Corporate Finance Inc., a professional business valuation firm. Please find enclosed the final Estimate Valuation Report as of April 30, 2021, which we submit on behalf of Thorneloe University which concludes (on page 70) that the valuation of the academic and commercial loss to Thorneloe is \$9.8 million.

Accordingly, we wish to amend this component of Thorneloe's Proof of Claim from \$11,479,624 to \$9.8 million, as supported by the above-noted Farber valuation report.

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

Andrew J. Hatnay
AJH/vdl: encl.

c. Client
Allan Nackan, *Farber Group*

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Thorneloe University

Estimate Valuation as of April 30, 2021

October 2021 | PRIVATE & CONFIDENTIAL

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Section I Assignment

Thorneloe University (“**Thorneloe**” or the “**University**”) has requested that Farber Corporate Finance Inc. (“**Farber**”) provide our estimate of Enterprise Value (“**Estimate Valuation**”) of Thorneloe on or about April 30, 2021 (“**Valuation Date**”), being that date on which Laurentian delivered disclaimers of the Thorneloe Federation Agreement and Financial Distribution Notice pursuant to section 32(7) of the CCAA.

We understand that our report will be used in connection with filing a claim for loss of Thorneloe’s academic and commercial value/business value as a part of its proof of claim in the claims process in Laurentian University’s (“**Laurentian**”) CCAA proceedings.

Section II

Engagement

Farber was retained by Thorneloe pursuant to an engagement agreement dated July 15, 2021 (the “**Engagement Agreement**”) to provide the Estimate Valuation for the purpose of a Claim For Loss. Farber will receive a fee for its services for providing the Estimate Valuation and will be reimbursed for its reasonable out-of-pocket expenses. Pursuant to the Engagement Agreement, Farber may receive additional fees for any additional services rendered after the delivery of the Estimate Valuation. The University has agreed to indemnify Farber, in certain circumstances, against certain expenses, losses, claims, actions, suits, proceedings, damages and liability which may arise directly or indirectly from services performed by Farber in connection with the Engagement Agreement. Fees payable to Farber are not contingent in whole or in part on the occurrence of any event or on the conclusions reached in the Estimate Valuation.

Section III

Credentials of Farber

Farber is a Canadian investment banking firm that provides investment banking services in the areas of business and securities valuations, financial opinions, corporate finance, and acquisitions, divestitures and mergers of middle-market companies. Farber has experience in transactions involving valuations and fairness opinions of private and publicly-traded companies.

The Estimate Valuation represents the views of Farber and its form and content have been approved by senior investment banking professionals of Farber, each of whom is experienced in merger, acquisition, divestiture, equity and debt capital markets, and valuation and fairness opinion matters.

Section IV

Independence of Farber

Farber is not: (i) an associated or affiliated entity of the University or an issuer insider (collectively, “Interested Parties”); (ii) an advisor to the Interested Parties or any of its associates or affiliates in connection with the preparation of the Estimate Valuation; (iii) a manager, co-manager or member of a soliciting dealer group in connection with the entity; (iv) an external auditor of the University or any Interested Parties.

Farber does not have a financial interest in (i) the Interested Parties, or (ii) the completion of the Estimate Valuation.

A. Farber & Partners Inc., an affiliated company of Farber Corporate Finance, has acted as financial advisor to Thorneloe to advise on Laurentian’s CCAA process. Notwithstanding, Farber Corporate Finance has prepared its own independent preparation of the Estimate Valuation.

Farber does not have any agreements, commitments or understandings in respect of any future business involving any of the Interested Parties. However, Farber may, from time to time in the future, seek or be provided with assignments from one or more of the Interested Parties.

The fees payable to Farber in connection with the Engagement Agreement are not contingent on the conclusions reached in the Estimate Valuation.

Farber is of the view that it is qualified and independent of the Interested Parties for the purposes of this engagement.

Section V

Currency

All amounts included in the Estimate Valuation are expressed in Canadian dollars unless otherwise specified.

Section VI

Restrictions and Qualifications

The Estimate Valuation has been prepared for the above-noted matter and, except as explicitly permitted herein, is not to be used for any purpose other than stated and is not intended for general circulation, nor is to be published or made available to other parties in whole or in part without Farber's prior written consent. Farber does not assume any responsibility for losses resulting from unauthorized or improper use of Estimate Valuation.

Farber has not completed sufficient work to permit it to express a formal opinion of the fair market value of the University. Based on the specific purpose of the valuation, Farber has completed its review to enable it to provide a reasonable estimate of the fair market value of the University for the stated purpose.

The financial statements and other information provided by President, Provost, Director of Finance, and Vice-Chancellor of the University ("**Management**"), have been accepted, without further verification, as correctly reflecting the business conditions and operating results of the University for the respective periods, except as noted herein.

In the completion of the Estimate Valuation, Farber has used Management's internally prepared balance sheet as of April 30, 2021 and Management's internally prepared profit and loss for the period from May 2020 through April 2021. Farber's estimate of value of the University is based on the assumptions that no material changes have taken place in operating or asset positions of the University that have not been brought to Farber's attention since the date of the financial information utilized by Farber.

Continued ...

Management has represented to Farber that, to the best of its knowledge, the information, financial or otherwise, provided to Farber, was true, complete and accurate in all material respects. Management has been requested to bring to Farber's attention any matters that would be significant to the Estimate Valuation, in addition to those matters discussed herein.

Farber has not made any physical inspection or independent appraisal of any of the assets of the University.

Farber has not been requested to, and did not, solicit third party indications of interest to acquire any or all of the ownership interests of the University.

The Estimate Valuation is rendered as of the date hereof on the basis of securities markets, economic, general business and financial conditions prevailing on or about the Valuation Date. The Estimate Valuation has been rendered on the condition and prospects, financial and otherwise, of the University as they were represented to Farber. Public information and industry and statistical information are from sources Farber considers to be reliable. Farber makes no representations as to the accuracy or completeness of such information. Farber disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting its estimates, which may come to Farber's attention after the date hereof.

No opinion, counsel or interpretation is intended in matters that require legal or other appropriate professional advice. It is assumed that such opinions, counsel or interpretations have been, or will be, obtained from the appropriate professional sources.

Continued ...

Farber disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting its opinion, which may come to Farber's attention after the date hereof.

Farber reserves the right to make revisions and/or further support its conclusions, if Farber considers it to be necessary for any reason, such as when facts existing at the date hereof become known to Farber after the issuance of the Valuation.

The Estimate Valuation is not, and should not be considered to be, a recommendation to shareholders, or to others, to take any course of action. The Estimate Valuation has been prepared solely for the purposes stated, it may not have considered issues relevant to third parties and Farber shall have no responsibility whatsoever to any third party. Any use a third party makes of this Estimate Valuation is entirely at its own risk.

The novel coronavirus pandemic ("**COVID-19**") is affecting economic and financial markets, and virtually all industries are facing changes associated with the economic and social conditions resulting from it. As the pandemic increases in both magnitude and duration, it creates challenges in conducting valuation engagements as valuation analysis herein is based on financial, economic, market and other conditions made available to us on or before, the Valuation Date. At the current time, forecasts for economic growth are uncertain as the severity and extent of financial, economic, market and other impacts of the pandemic remain unknown, therefore Farber's valuation conclusion may be materially affected if COVID-19, and the resulting impacts from COVID-19, becomes significantly more severe or prolongs for an extended period.

Section VII

Fair Market Value

For the purposes of this assignment, Farber, has been guided by the concept of “Fair Market Value”. This concept is defined as the highest price, expressed in terms of money or money’s worth, obtainable in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to transact.

Section VIII

Scope of Review

Farber has been provided with information, data, opinions and other materials regarding the University prepared by Management in addition to information available from public sources (the “**Information**”).

Farber’s review consisted primarily of inquiry, review, analysis, and discussion of the Information. As well, Farber referred to and made use of general industry and economic information obtained from other sources considered reliable and necessary in the circumstances. Based on discussions with Management, the University exhibited a significant change in operations in 2019 and therefore financials have not been reviewed for fiscal years prior to 2019.

In connection with the Estimate Valuation, Farber has made such reviews, analyses and inquiries as it has deemed necessary and appropriate in the exercise of its professional judgement, without attempting to verify independently the completeness or accuracy thereof. Farber reviewed and relied upon the documentation and discussions held as set out below:

As it relates to the University:

General

- i. University overview and marketing materials retrieved from www.thorneloe.ca
- ii. Report on Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University prepared by A. Farber & Partners Inc. “**Farber Insolvency & Restructuring**” dated April 19, 2021
- iii. Supplementary Report in relation to Monitor’s Report prepared by Farber Insolvency & Restructuring dated April 26, 2021
- iv. Discussions with Mary Cornthwaite, Director of Finance at Thorneloe, and John Gibaut, Chancellor at Thorneloe

Continued ...

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Financial

- i. Audited financial statements for fiscal years ended April 30, 2019 and 2020
- ii. Management's internally prepared balance sheet as of April 30, 2021
- iii. Management's internally prepared profit and loss for the period from May 2020 through April 2021
- iv. Management's internally prepared summary of restricted and non-restricted funds available to Thorneloe as at April 30, 2021

Market Data

- i. Capital IQ database – all market data has been retrieved as of April 30, 2021

Industry and Economic Analysis

- i. Statistics Canada analysis of the Canadian economy as of April 2021
- ii. IBIS World Colleges & Universities in Canada Market Research Report dated July 28, 2020
- iii. Statistics Canada summary of Ontario University tuition fees for full-time Canadian and international students in an arts and humanities program, 2020/2021 academic year

Continued ...

Section IX

Prior Valuations

The University has represented to Farber that, among other things, it has no knowledge of any prior valuations or appraisals of the University, its securities, or any material assets of the University made in the past 24 months.

Section X

Assumptions, Limitations and Major Considerations

For the purposes of the Estimate Valuation, considering the operations of Thorneloe immediately prior to the termination of the Federation Agreement with Laurentian, Farber made the following assumptions, all of which Farber considered reasonable in the exercise of its professional judgment:

- i. *Economic conditions will not significantly deteriorate beyond remediation.* Farber has assumed that economic conditions and business risks will not deteriorate beyond Management's ability to undertake remedial actions.
- ii. *Ownership of intellectual property is included in the enterprise valuation.* Farber has considered that a hypothetical purchaser would not attribute value to the business unless all intellectual property could be acquired with the enterprise.
- iii. *The University can access and retain employees with the necessary skills.* Farber has assumed that Management will have the ability to attract and keep employees with the skills and experience necessary to compete in the industry.
- iv. *The business will not be impacted by the departure of key personnel.* Farber has assumed that should key employees depart from the business, appropriate transfer of knowledge would occur to allow the business to continue operating without negatively impacting earnings.

Continued ...

A senior officer of the University has represented to Farber in writing that, among other things:

- i. the Information provided to Farber by the University for the purposes of preparing the Estimate Valuation was complete and correct in all material respects at the date the Information was provided to Farber;
- ii. the Information did not contain any untrue statement of a material fact in respect of the University;
- iii. the Information did not omit to state a material fact in respect of the University necessary to make the Information not misleading in light of the circumstances under which the Information was provided;
- iv. since the date that the Information was provided to Farber, there has been no material change, financial or otherwise, in the University's business that has not been disclosed to Farber and there has been no change of any material fact which is of a nature as to render the Information untrue or misleading in any material respect;
- v. since the date of the Information, no material transactions have been entered into by the University, except in the normal course of business;

Continued ...

- vi. other than as disclosed in the Information, the University does not have any material contingent liabilities out of the ordinary course of business;
- vii. other than as disclosed in the Information, there are no actions, suits, proceedings or inquiries, pending or threatened, against or affecting the University, or any of their respective assets at law or in equity or before or by any federal, provincial, municipal or other government department, commission, board, bureau, agency or instrumentality which may in any way materially affect the University;
- viii. there have been no offers or negotiations for the purchase of the assets of the University or for all or a material part of the University within the two years preceding the date hereof which have not been disclosed to Farber;
- ix. all financial material, documentation and other data (excluding the information referred to in the next paragraph) concerning the University and provided to Farber by the University are complete, true and correct in all material respects, and did not and does not contain any untrue statement of a material fact and did not and does not omit to state a material fact necessary to make any statement contained therein not misleading in light of the circumstances under which any statement was made; and

Continued ...

- x. all projections, forecasts and models concerning the University and provided to Farber by the University: (a) were reasonably prepared on bases reflecting the best currently available estimates and judgment of the University; (b) were prepared using the assumptions identified therein or otherwise disclosed to Farber, which in the reasonable belief of the management of the University are (or were at the time of preparation) reasonable in the circumstances; (c) were prepared with special consideration of the potential impacts of COVID-19 and (d) are not, in the reasonable belief of Management, misleading in any material respect in light of the assumptions used or in light of any developments since the time of their preparation which were disclosed to Farber.

Section XI

General Economic Conditions

The Canadian Economy is exhibiting a rebound after its steepest decline in decades due to COVID-19. While the country is nearing its pre-pandemic levels of output, there is uncertainty as to the long term impacts of COVID-19 and the extent to which variants of the virus may further impede economic growth.

Real GDP, January 2007 to March 2021

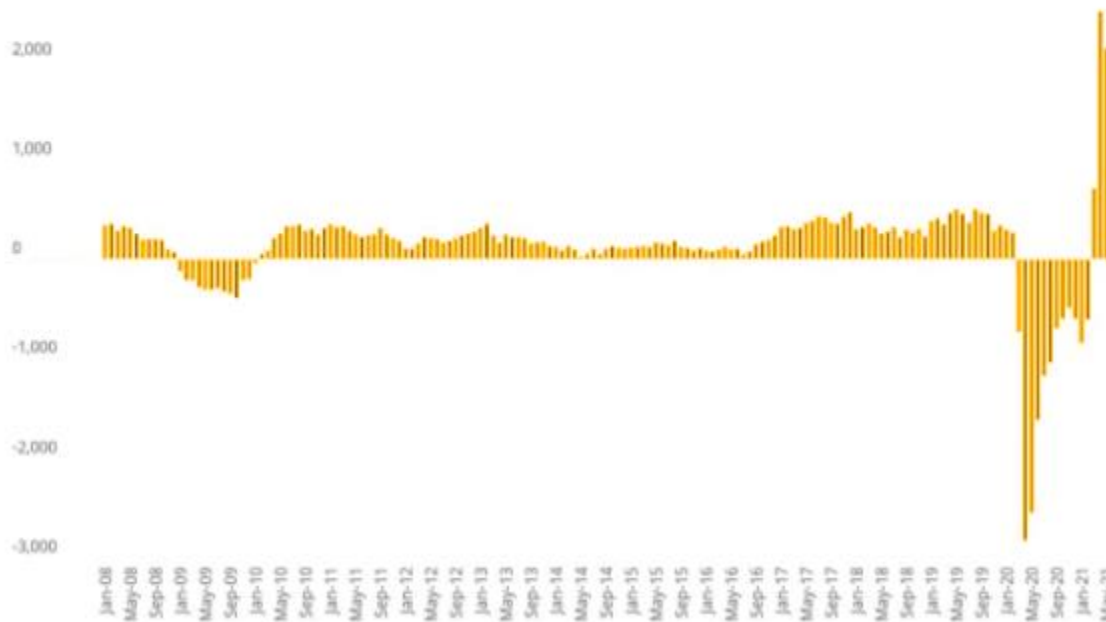
Billions, chained \$



Source: Statistics Canada

Employment fell for a second consecutive month in May 2021 with approximately 500,000 fewer Canadians employed as compared to February 2020. As compared to May 2020, shortly after the onset of the COVID-19, over 2 million more Canadians were employed year-over-year in May 2021.

Year-over-year change in employment, January 2008 to May 2021
000s of jobs



Source: Statistics Canada

The residential real estate market has exhibited record-breaking activity, both in declines and rapid growth, since the onset of COVID-19. After months of sharp increases in units sold, the resale market has begun to cool off as of May 2021.

Units sold

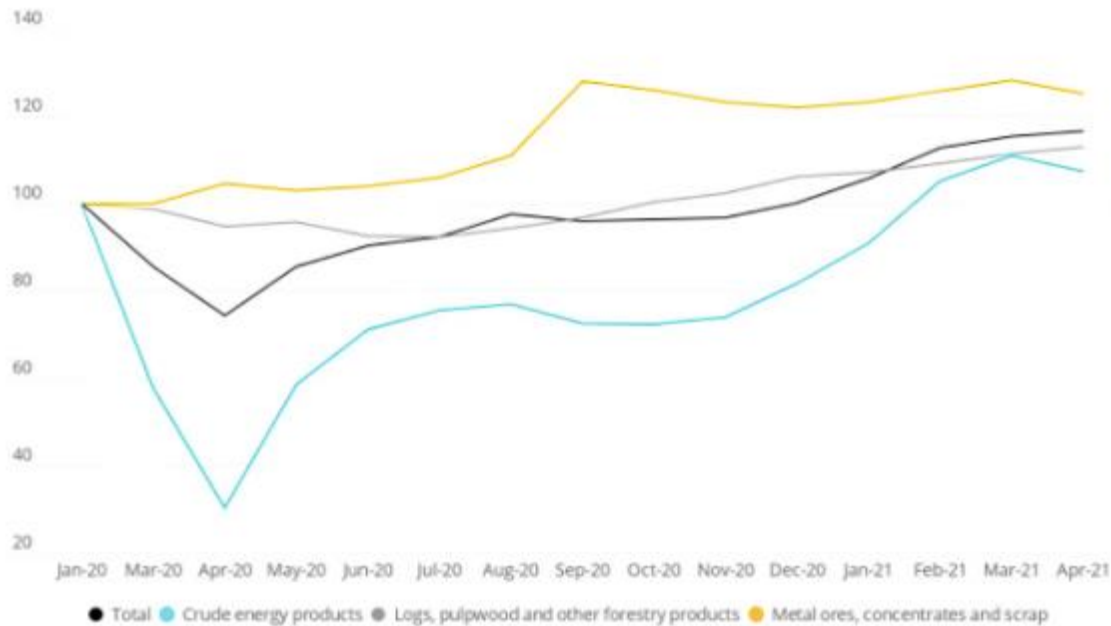


Source: Statistics Canada

Commodity prices are trending upwards, benefitting numerous Canadian producers.

Raw materials price index by category

Index: January 2020 = 100



Source: Statistics Canada

Beyond mid-August 2021, predicting the course of global economies and monetary policies are substantially difficult. Financial markets and the broader economy depend on the ongoing and future impacts of COVID-19.

There is uncertainty as to the extent of the COVID-19 impact on global economies and monetary policies for the short and medium term

Section XII

General Industry Overview

Market Size

\$44BN

Number of Businesses

262

Industry Employment

318,727

The Colleges and Universities industry in Canada includes public and private institutions that grant certificates, associate degrees, baccalaureate degrees, and graduate degrees. The overall industry has experienced growth over the five years to 2020 as rising student enrolment, coupled with higher tuition fees, have largely offset declining levels of government funding. According to Statistics Canada, average tuition fees have experienced steady growth over the five years to 2020, with average tuition costs for the typical Canadian undergraduate student rising 3.1% during the 2017-18 academic year alone.

The industry is expected to experience marginal growth over the next five years. In the long run as Canada recovers from the COVID-19 pandemic, a healthier economy may lead to increased government funding allocated to post-secondary institutions. Private sector profit is expected to increase over the next five years and in tandem, research and development expenditure is also expected to increase as the economy resurges in a post-coronavirus world. An increase in research and development activity may translate to an increase in research grants for Canadian universities.

Source: IBIS World Colleges & Universities in Canada Market Research Report dated July 28, 2020

Ontario University tuition fees (Canadian dollars) for full-time Canadian and international students in an arts and humanities program, 2020/2021 academic year.

University	Undergraduate Domestic Students	Undergraduate International Students	Graduate Domestic Students	Graduate International Students
Algoma University	\$5,865 - \$5,865	\$18,287 - \$18,287		
Brock University	\$5,917 - \$6,089	\$27,886 - \$27,886	\$5,850 - \$8,176	\$23,504 - \$23,504
Carleton University	\$6,067 - \$9,614	\$26,268 - \$36,457	\$4,952 - \$6,514	\$13,060 - \$16,274
Lakehead University	\$5,398 - \$5,985	\$25,000 - \$25,000	\$4,894 - \$5,390	\$15,334 - \$15,334
Laurentian University (excludes Hearst University)	\$5,678 - \$6,000	\$25,309 - \$25,960	\$5,353 - \$5,721	\$12,961 - \$14,361
McMaster University	\$5,955 - \$6,043	\$29,139 - \$33,852	\$6,307 - \$6,307	\$6,037 - \$17,096
Nipissing University	\$5,781 - \$5,781	\$19,325 - \$19,325	\$8,506 - \$8,506	\$18,350 - \$18,350
OCAD University	\$6,052 - \$6,052	\$25,455 - \$25,455	\$16,670 - \$16,670	\$33,123 - \$33,123
Ontario Tech University	\$9,159 - \$9,390	\$28,346 - \$31,469	\$7,579 - \$8,860	\$19,166 - \$25,074
Queen's University	\$6,083 - \$6,083	\$41,053 - \$48,500	\$5,773 - \$5,773	\$12,927 - \$12,927
Ryerson University	\$6,093 - \$6,110	\$26,964 - \$27,300	\$4,307 - \$16,278	\$21,260 - \$22,190
Trent University	\$6,118 - \$6,118	\$20,721 - \$22,454	\$5,394 - \$5,394	\$13,590 - \$13,590
University of Guelph	\$5,893 - \$6,091	\$10,703 - \$26,730	\$4,587 - \$4,993	\$5,650 - \$15,081
University of Ottawa	\$6,088 - \$6,088	\$36,161 - \$36,161	\$6,367 - \$7,798	\$16,334 - \$27,519
University of Toronto	\$6,100 - \$11,420	\$37,680 - \$58,970	\$6,210 - \$10,350	\$6,210 - \$41,470
University of Waterloo	\$6,128 - \$7,621	\$30,237 - \$40,325	\$3,504 - \$4,508	\$4,128 - \$14,508
University of Windsor	\$5,800 - \$5,800	\$25,800 - \$27,150	\$7,179 - \$7,179	\$24,255 - \$24,255
Western University (excludes colleges)	\$6,050 - \$6,050	\$29,936 - \$33,526	\$6,360 - \$6,360	\$18,612 - \$18,612
Wilfrid Laurier University	\$5,663 - \$7,081	\$26,586 - \$27,860	\$4,536 - \$11,543	\$11,511 - \$24,129
York University	\$6,118 - \$6,118	\$31,496 - \$31,496	\$2,871 - \$2,871	\$12,550 - \$12,550

Source: Statistics Canada

Section XIII

General Background of Thorneloe University



Thorneloe University, also formerly known as Thorneloe University at Laurentian, is located in Sudbury, Ontario, Canada. The University was started in 1961 when it was granted its academic charter from the Government of Ontario. Historically, the University was governed through the Senate of Laurentian University which had governing oversight and control over all programs at Thorneloe University except the School of Theology program. The School of Theology program is operated by Thorneloe independently and separately from programs offered through Laurentian. Historically, Thorneloe's primary source of income was through Government grants, tuition fees, and residence fees that flowed through Laurentian and its primary costs comprised of faculty salaries and benefits, administrative salaries and benefits, service fees paid to Laurentian, building maintenance, course writing and review, and certain other items. Based on discussions with Management, almost all of Thorneloe's revenue generation and eligibility for grants, its largest revenue source, is dependent on the continued partnership between Laurentian and Thorneloe.

In 1962, Thorneloe entered into a Federation Agreement with Laurentian. Around that time period, the University of Sudbury ("**Sudbury**"), and the University of Huntington ("**Huntington**"), also entered into Federation Agreements with Laurentian. The intention by the parties was that all four universities would be academically and administratively interconnected, operate as one university, and that the three federated universities would be able to receive public funding flowing through Laurentian.

On November 10, 1993, Laurentian, Thorneloe, Sudbury, and Huntington, entered into the Proposed Grant Distribution and Services Fees. That agreement was unilaterally amended by Laurentian with the Financial Distribution Notice, dated May 1, 2019. This notice, sets out terms for the flow of public grants and other funds to Thorneloe (and the other Federated universities) through Laurentian, pursuant to formulae in respect of the courses that Thorneloe provides that form part of Laurentian's Faculty of Arts course curriculum.

According to Management, over the past few years, various discretionary changes in Laurentian operations and policies had negatively impacted Thorneloe's financial performance including but not limited to changes to Thorneloe's funding arrangement with Laurentian and reduction of grants. Given that Thorneloe's operations were dependent on the grants received pursuant to the federated agreement with Laurentian, as Laurentian's imposed changes were made, Thorneloe Management expressed that it had no choice but to adjust, restructure, and revise operations as appropriate in order to maintain financial feasibility of its operations. Despite these adjustments, profitability still declined.

Thorneloe historically offered the following programs:

- Religious Studies
- Classical Studies
- Ancient Studies
- Women's, Gender, and Sexuality Studies
- Theatre Arts
- Motion Picture Arts
- Inter Arts (in conjunction with Laurentian University and Cambrian College)
- Theology (not connected to Laurentian)

In April 2021, Laurentian unilaterally gave notice that it intended to disclaim the Federation Agreements and the Financial Distribution Notice with Thorneloe University, University of Sudbury, and Huntington University. Thorneloe University brought a motion to court opposing the disclaimer of these agreements. The court dismissed that motion, and leave to appeal that decision was denied by the Ontario Court of Appeal.

Termination of the Federation Agreement has caused significant financial hardship to Thorneloe and the University has ceased all teaching operations with the exception of the Theology program; which does not generate significant revenues. Since it has been terminated, Thorneloe will no longer be eligible to receive government grants; one of the University's largest revenue streams. As a result, Thorneloe has terminated all of its academic staff and has only retained a small skeleton administrative staff to oversee the wind-down and possible formal insolvency of Thorneloe.

Source: Discussions with Management, Thorneloe.ca, Farber Insolvency and Restructuring Report

Section XIV

Valuation Methodology

General Principles

The fundamental premise on which all investment decisions are based is that value to a potential investor is equal to the present worth of future benefits. This basic concept can be applied to the valuation of an entire company, as well as the particular securities which comprise the capital structure of that company or the individual assets of the company. In each instance, it is a matter of identifying the future returns to the investor that the company, security or asset can be reasonably expected to generate and determining its present value in the context of the uncertainty associated with realizing these returns.

There are two bases on which to determine the value of a company: going-concern and liquidation. In the case of a company that is expected to continue operating well into the future, the prospective investor will evaluate the risks and expected returns of the investment on a going-concern basis. The investor's primary concern is not with the individual values of enterprise assets, but with their ability to generate the returns expected in the future. Only secondarily is the investor interested in individual asset values, and this is from the standpoint of security or collateral for their investment, if for any reason the company should choose to liquidate. In such a case, liquidation values for the assets as well as all costs associated with liquidation would prevail.

Continued ...

When determining the value of a business enterprise, there are three general approaches available to the valuation professional: the market approach, the income approach, and the asset approach. These are also commonly referred to as the market capitalization, discounted cash flow (“**DCF**”), and adjusted book value approaches, respectively. The choice of which approach to use in a particular situation will depend upon the specific facts and circumstances associated with the company, as well as the purpose for which the valuation analysis is being conducted.

Continued ...

Market Capitalization Approach

The market capitalization approach is a useful method of determining the fair market value of a company which is currently profitable and is expected to remain profitable in the future. This methodology may be used for closely-held private companies to determine what the company or security would be worth in the public market. In addition, it can be used to value a company as a private entity, subject to adjustments for size or liquidity. This approach provides indications of value by studying either transactions or market trading metrics of companies or securities similar to the subject company for which a value conclusion is desired.

The approach is one of determining a level of earnings which is considered to be representative of the future performance of the company, and capitalizing this figure by an appropriate risk-adjusted rate. This approach provides an indication of value for the security, which corresponds with the particular earnings figure being capitalized (for example, capitalizing net earnings available to common stockholders would yield an indication of value for the common stock).

There are several different forms of “earnings” used in the market capitalization approach, because each form isolates particular nuances of the company’s operating performance.

Hence, the various “earnings” figures used throughout this report, including EBITDA, earnings before interest and taxes (“**EBIT**”), debt-free cash flow (“**DFCF**”), debt-free earnings (“**DFE**”), cash flow (“**CF**”), and earnings (“**E**”), are all just variations of the conventional net income figure determined according to generally accepted accounting principles.

Continued ...

The capitalization rate is an expression of what investors believe to be a fair and reasonable rate of return for the particular security, given the inherent risks of ownership. It incorporates expectations of growth and rests on the implicit assumption that some level of earnings will be generated by the enterprise into perpetuity. The most common means of obtaining capitalization rates is through the market comparison method, whereby companies (“**Comparable Companies**”) having their stock traded in the public market are selected for comparison purposes and used as a basis for choosing reasonable capitalization rates for the subject company. Capitalization rates obtained in this manner are generally expressed as ratios of the various earnings figures, and are referred to as “market multiples.” Another common method of obtaining such multiples is to examine companies that have recently been sold in the public marketplace (“**Transaction Comparables**”). For this method, the total price paid for the company is related to earnings figures which yield implied transaction multiples. The acquired company is then compared with the subject company on the basis of risk and expected return, and the comparable transaction multiples are used as a basis for selecting appropriate multiples for the subject company.

Continued ...

Market multiples are categorized as either “leveraged” or “debt-free” depending on whether or not the earnings figures being capitalized are net of interest expense. The most common leveraged multiple is the price/earnings (“**P/E**”) ratio, which relates the price paid for the common stock of a company with that company’s earnings per share. The multiple is considered to be “leveraged” because earnings per share is net of any interest expense, and capitalization of this figure effectively incorporates the impact of any debt the company has into the final value for the equity. Another leveraged market multiple is the price/cash flow (“**P/CF**”) ratio, where cash flow equals net earnings plus depreciation expense. The P/CF multiple is used primarily in instances where the operating assets of the business, and the resulting depreciation expense, are large relative to total assets, total revenues and net earnings. This multiple tends to compensate for differences in the depreciation practices of companies, which could result in differing P/E multiples when the P/CF multiples are more comparable. A third form of leveraged market multiple, which is used in very specific instances, is the price/net book value (“**P/NBV**”) ratio. This form is typically employed for businesses which have substantial investments in tangible assets and for which operating earnings provide a reasonable return on investment. Examples of such businesses include banks, trust companies, and insurance companies, where a majority of the company’s assets are financial in nature.

Continued ...

Debt-free market multiples relate the value of the company's enterprise value ("**EV**" or "**Enterprise Value**"), or debt plus equity, to earnings figures from which no interest expense has been deducted. The more common debt-free multiples are enterprise value/earnings before interest, taxes, depreciation and amortization ("**EV/EBITDA**"), enterprise value/earnings before interest and taxes ("**EV/EBIT**"), enterprise value/debt-free cash flow ("**EV/DFCF**"), and enterprise value/debt-free earnings ("**EV/DFE**"). The use of these multiples may be appropriate when comparing companies that have substantially different amounts of financial leverage, because the multiples are based on total company value, which is generally independent of the amount of leverage in the company's capital structure. Their use effectively separates the issue of company valuation from the specific financing decisions that are made to operate the business. Furthermore, EV/EBITDA and EV/EBIT multiples, which are developed from pre-tax earnings figures, may be appropriate when comparing companies that have substantially different income tax situations, as well as different amounts of financial leverage. In general, these debt-free methods reduce distortions in P/CF and P/E that might be present due to differences in financial leverage or income taxes among firms. Another debt-free multiple is the enterprise value/revenue ("**EV/R**") ratio, which may be applicable in certain situations.

The market comparison method may also be useful in the valuation of individual assets. However, comparable transaction values of individual assets are seldom available because individual assets typically are transferred only as part of the sale of a business, not in piecemeal transactions. Furthermore, because individual assets are unique to a particular enterprise, comparison between enterprises is difficult. For these reasons, the market approach is seldom used and is rarely appropriate in the valuation of individual assets, unless exchanges of individual assets comparable to the subject asset can be observed.

Continued ...

DCF Approach

The DCF approach is another popular method of determining the fair market value of a company. The approach is one of estimating the present value of the projected future cash flows to be generated from the business and theoretically available (though not necessarily paid) to the capital providers of the company. In the DCF approach, the counterpart to the market multiple described above is the discount rate applied to the projected future cash flows to arrive at the present value. The discount rate is intended to reflect all risks of ownership and the associated risks of realizing the stream of projected future cash flows. It can also be interpreted as the rate of return that would be required by providers of capital to the company to compensate them for the time value of their money, as well as the risk inherent in the particular investment. However, unlike the market multiple approach, the discount rate employed in the DCF approach contains no implicit expectations of growth for the cash flows. Instead, the projected cash flows themselves reveal growth expectations, while allowing for a great deal more flexibility in projecting such growth rates.

In contrast to the “cash flow” or “earnings” figures used in the market capitalization approach, the figure used in the DCF approach more accurately represents the true cash flow being generated by the operations of the business. In short, it incorporates cash expenditures on working capital and fixed assets, while also recognizing the non-cash expenses contained in earnings figures. The cash flows are typically projected over a limited number of years, which will depend on the planning horizon of the specific firm or asset and other factors related to the particular industry and the general economy.

Continued ...

As a result, it is necessary to compute a terminal value as of the end of the last period for which cash flows are projected. This terminal value is essentially an estimate of the value of the enterprise as of that future point in time, and it incorporates the assumptions of perpetual operations and implicit growth found in the market capitalization approach. Discounting each of the projected future cash flows and the terminal value back to the present, and summing the results, yields an indication of value for the enterprise as a whole.

Continued ...

Treatment of Redundant Assets in the Market Capitalization and DCF Approaches

When used in combination, the various forms of the market capitalization approach and the DCF approach can lead to a reasonable indication of value for the subject company. However, these approaches do not generally capture the value of assets and liabilities that are not required for the operation of the business. Examples of such “non-operating” assets and liabilities include excess cash, investments not related to the company, unnecessary land and equipment, and contingent liabilities such as an under-funded pension plan. If such items exist, they must be valued separately and used to adjust the going-concern value indications determined by the market capitalization and DCF approaches.

Continued ...

Adjusted Book Value

The adjusted book value approach also provides meaningful indications of value for a company, although its applicability is generally limited to specific situations in which the market capitalization and DCF approaches are less suitable. The market capitalization and DCF approaches are appropriate in most going concern situations as the worth of a company is generally a function of its ability to earn future income or cash flow to provide an appropriate rate of return on investment. Asset values can sometimes constitute the prime determinant of corporate worth. This depends on the nature of the company's operations (such as an investment holding company), or if the outlook for a company's earnings is somewhat uncertain, or returns based on earnings are insufficient to justify the investment in assets.

The adjusted book value approach differs from the market capitalization and DCF approaches in two important ways. First, it focuses on individual asset and liability values from the company's balance sheet, which are adjusted to fair market value. In contrast, the market capitalization and DCF approaches focus on the aggregate returns generated by all the company's assets. Second, it can be applied in situations where liquidation is imminent. The market capitalization and DCF approaches have very limited applicability in a liquidation scenario.

The adjusted book value approach can also be used in going-concern situations to provide an additional indication of value. The approach may be appropriate in instances where the subject company has a heavy investment in tangible assets or where operating earnings are insignificant relative to the value of the underlying assets. On the other hand, it may not be the best approach in instances where the company has substantial operating earnings relative to the value of the underlying assets. In such cases, the residual equity value resulting from the adjusted book value approach may not reflect the value inherent in the company's superior cash-generating capability.

Section XV

Valuation of Thorneloe University

The Estimate Valuation is based upon assumptions and approaches that Farber considered appropriate in the exercise of its professional judgement for the purpose of arriving at an estimate of the range of fair market values of the University.

In Farber's analysis of Thorneloe, Farber has taken into consideration the income and cash-generating capability of the University. Typically, an investor contemplating an investment in a company with income and cash-generating capability will evaluate the risks and returns of the investment on a going-concern basis.

Earnings or cash flow based valuations are often used where it is assumed that the assets employed are providing, or are reasonably expected to provide, an appropriate rate of return on investment. Asset based approaches are typically favored in most other situations.

Thorneloe is a non-for-profit entity and has historically operated at close to break-even. Therefore, the discounted cash flow approach was not used as free cash flows are not available to Thorneloe upon which the discounted cash flow approach would be applied.

Given the lack of precedent transactions with publicly disclosed financial information available which may be considered comparable to Thorneloe, the market capitalization of precedent transactions approach was not used in our analysis.

Continued ...

FARBER

In order to determine the operating enterprise value of the University on or about the Valuation Date, Farber has relied upon the following valuation methodologies :

- i. Market capitalization – comparable companies; and
- ii. Adjusted book value approach.

Thereafter, Farber understands that there are cash and cash equivalents, and non-operating investment assets of the University which Farber determined to be redundant assets and forms value to the University in addition to the operating enterprise value.

The valuation results under the approaches employed are summarized in Appendix A.

Continued ...

FARBER

General

Given the universe of North American private universities that are publicly traded, Farber used the market capitalization approach to estimate the valuation of Thorneloe. We also took note of certain publicly traded international universities and transactions in the sector for which financial information was available and relevant. The section below outlines the procedures Farber performed to identify comparable public companies or comparable market transactions.

Revenue and EBITDA

Farber has reviewed Thorneloe's internally prepared financial statements for FY2021 and estimated normalized income statement for operations going forward. Based on the foregoing, Farber has reviewed the revenue and expense items that form Thorneloe's reported operating results summarized in Appendix D and Appendix E.

Given that Thorneloe is winding down its operations and does not expect to generate the same level of revenue in the future (i.e. certain grants will no longer be available), it is Farber's view that Thorneloe's historical revenue is not an inaccurate representation of the University's maintainable revenue for the purpose of the Estimate Valuation on or about the Valuation Date. Additionally, given that Thorneloe is a not-for-profit enterprise, it is Farber's view that Thorneloe's historical EBITDA is not an accurate measure of value for the purpose of the Estimate Valuation.

Continued ...

Based on the foregoing, it is Farber's view that Thorneloe's estimated normalized revenue of approximately \$2.2 million (based on discussions with Management) is not an unreasonable measure of Thorneloe's value upon which the market capitalization approach may be applied on or about the Valuation Date.

Market Multiples

The selection of an appropriate capitalization rate or earnings multiple to apply to the selected level of earnings is, of necessity, a matter of informed judgment and is dependent upon a number of factors, including:

- i. the length of time Thorneloe has been in existence;
- ii. the size and profitability of Thorneloe's operations;
- iii. the location of Thorneloe's campus;
- iv. the campus size and courses offered at Thorneloe;
- v. Thorneloe's historical revenue and profitability trends for the period under review;
- vi. the level of maintainable normalized revenue selected;
- vii. the outlook for the Canadian Colleges & Universities industry on or about the Valuation Date; and
- viii. the competitive landscape of the Canadian Colleges & Universities industry on or about the Valuation Date.

Continued ...

Farber has also considered market multiples for publicly traded companies, as of the Valuation Date, which Farber deems to be comparable (Appendix B).

Selection of Comparable Public Companies

When performing a comparable company analysis under the Market Capitalization Approach, it is important to examine a representative list of publicly owned companies that are similar to Thorneloe. In some cases, companies may be quite similar from an investment standpoint, even though they appear to be engaged in somewhat different lines of business or industries. Primarily, they should offer operational and economic comparability in the area of major importance to potential investors.

Farber's search for such comparable companies included review of the Capital IQ database, which contains pertinent financial and operating information on actively traded public companies. In establishing the search parameters, four basic criteria had to be met initially:

- i. the company had to primarily be engaged in operating as a private education institution;
- ii. the company's common stock had to be publicly traded;
- iii. the company's trading multiples had to be publicly disclosed; and
- iv. the trading market of the company had to be relatively active to obtain true investor sentiment.

Continued ...

After reviewing numerous companies fitting the general criteria described above, Farber selected twenty-six companies for comparative purposes. Of these comparable companies, four are publicly traded private universities listed in the U.S. and six are publicly traded private universities listed internationally. Farber believes that the selected companies are comparable to Thorneloe seeing as the comparables are academic institutions which generate earnings through tuition fees and other certain revenue sources similar to Thorneloe. Notwithstanding that certain of the comparable companies may be larger in size, liquidity, historical growth and certain other characteristics further set out herein, the similar nature of the comparable companies' operations provides a reasonable comparative measure of value of universities such as Thorneloe upon which the Market Capitalization approach may be applied. A description of each of the Comparable Companies is provided in Appendix I.

Comparative Analysis

Before drawing any conclusions from the market multiples of the Comparable Companies, it is necessary to complete a comparative analysis in which an assessment is made of Thorneloe's risk and return characteristics relative to the Comparable Companies. The analysis focuses on both quantitative considerations (which include financial performance and other quantifiable data) and qualitative considerations (which include any factors that are expected to impact future financial performance and investors' interpretations of financial results).

Continued ...

We note that in comparing the last twelve months (“**LTM**”) figures of the Comparable Companies to Thorneloe's performance, we used Thorneloe's normalized financials as per Appendix D. For the purpose of analysis of Thorneloe's risk and return characteristics relative to the Comparable Companies, Farber has performed its analyses on the U.S. listed publicly traded private universities and internationally listed publicly traded private universities.

Farber's review of Thorneloe's qualitative and quantitative factors relative to Comparable Companies indicated the following (Appendix H):

i. Size

- a. Thorneloe is the smallest of the Comparables as measured by Enterprise Value, LTM revenue and LTM EBITDA

ii. Liquidity

- a. Thorneloe has the fourth lowest liquidity among the Comparables as measured by the current ratio

iii. Historical Growth

- a. Thorneloe has exhibited the lowest LTM revenue growth among the Comparable Companies

iv. Leverage

- a. Thorneloe has the lowest leverage among the Comparables as measured by total debt/equity %

v. Profitability

- a. Thorneloe has exhibited the lowest LTM EBITDA margin among the Comparable Companies

Continued ...

Determination of Market Multiples

Debt-free market multiples for the Comparable Companies were derived by dividing the value of each company's Enterprise Value by LTM Revenue.

The derived market multiples vary reflecting differing investor sentiment towards each of the Comparable Companies, as well as the specific industry and general economic factors. The resulting multiples for the selected Comparable Companies (U.S. listed private universities and internationally listed private universities) were as follows (Appendix B):

	EV / LTM Revenue Multiples		
	U.S. Listed Private Universities	Internationally Listed Private Universities	U.S. and Internationally Listed Private Universities
Minimum	.46x	2.81x	.46x
Maximum	3.28X	7.94X	7.94X
Median	1.15x	4.21x	3.52x
Mean	1.51x	4.82x	3.50x

Source: Capital IQ

Continued ...

Farber's view is that a prospective purchaser of Thorneloe would select a LTM Revenue multiple that is between the minimum and the median of the Comparable Companies due to the following factors, among others:

- i. Special consideration has been given to the multiples of U.S. listed private universities;
- ii. Thorneloe is the smallest in terms of revenue, EBITDA, and enterprise value among the Comparable Companies;
- iii. Thorneloe has the lowest LTM revenue growth among the Comparable Companies;
- iv. Thorneloe has fourth lowest liquidity as measured by the current ratio among the Comparable Companies; and
- v. Thorneloe has the lowest leverage as measured by total debt to equity ratio among the Comparable Companies.
- vi. Thorneloe's operations are dependent on the continued partnership between Laurentian and Thorneloe.

Continued ...

Based on the factors above, Farber's selected range of market multiples are as follows:

	EV/LTM Revenue
Low	1.25x
High	1.75x

Publicly Traded Comparable Companies Summary

The value indicators that have been computed using the Market Capitalization of Publicly Traded University Approach reflect Enterprise Value of Thorneloe. As set out in Appendix B, applying the appropriate EV/LTM Revenue multiples to the LTM Revenue yields an Operating Enterprise Value range for the University in the range of approximately \$2.8 million to \$3.9 million.

Given that Thorneloe is winding down its operations and may enter into a formal insolvency process, Farber believes that the book value of equity is not an unreasonable measure of the University's value as of the Valuation Date.

As set out in Appendix C, the book value of operating assets as of April 31, 2021 was approximately \$4.3 million and the book value of operating liabilities as of April 31, 2021 was approximately \$1.5 million.

To arrive at the book value of equity of Thorneloe, we subtracted the book value of operating liabilities of approximately \$1.5 million from the book value of operating assets of approximately \$4.3 million. As a result, Farber calculated the estimated fair market value of Thorneloe's on-going business operations to be approximately \$2.8 million (Appendix C).

Section XVI

Analysis of Approaches

As set out in Appendix A, there is a reasonable range of operating enterprise values implied by the valuation approaches employed ranging from a value of approximately \$2.7 million to approximately \$3.9 million, excluding the value of non-operating assets.

Furthermore, the implied operating enterprise value range determined using the market capitalization approach is corroborated by the implied operating enterprise value range of the University's ongoing business operations determined using the adjusted book value approach and thus Farber believes that neither approaches are unreasonable value measures of the University's operations on or about the Valuation Date.

Based on Farber's understanding, Thorenloe, at the Valuation Date, has a total of approximately \$8.6 million total investment reported on the financial statements (Appendix G), of which approximately \$6.7 million is non-restricted, and can be used by Thorneloe for any purposes. The remaining \$1.9 million are restricted and can only be used for certain specific purposes. For the purpose of this Valuation, the non-restricted portion of the investments (\$6.7 million) are effectively treated as cash and cash equivalents, and are considered to be redundant assets/non-operating assets.

To the selected operating enterprise value range of approximately \$2.8 million to \$3.3 million, we added the total non-operating assets of approximately \$6.7 million to arrive at the implied enterprise value. (Appendix A)

The resulting implied Enterprise Value range is between \$9.5 million and \$10 million. If Farber were asked to select a particular amount, it would select the mid-point of approximately \$9.8 million.

Section XVII

Summary and Conclusion

As set out in Appendix A, based on information and data relied upon, and subject to the restrictions and qualifications and assumptions and major considerations noted herein, Farber has concluded that the estimated enterprise value of Thorneloe on or about the Valuation Date to be in the approximate range of \$9.5 million to \$10 million. If Farber were asked to select a particular value, it would select the midpoint of \$9.8 million.

Farber trusts that the Report meets your present requirements. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

FARBER CORPORATE FINANCE INC.

Appendices

	Low	High
Implied Enterprise Value		
Adjusted Book Value	\$2,700,000	\$2,700,000
Publicly Traded Comparable Companies Analysis	\$2,750,000	\$3,850,000
<i>Average</i>	<i>\$2,725,000</i>	<i>\$3,275,000</i>
Selected Operating Enterprise Value	\$2,800,000	\$3,300,000
 Add: Non-Operating Assets		
Investments in Non-Restricted Funds (Rounded)	\$6,700,000	\$6,700,000
Implied Enterprise Value Range	\$9,500,000	\$10,000,000

Appendix B – Market Capitalization Comparable Companies Analysis

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in millions \$CAD

Company Name	Market Cap	Total EV	LTM Sales	LTM EBITDA	Total EV / LTM Sales	Total EV / LTM EBITDA
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Private University - U.S. Listed

Laureate Education, Inc.	\$3,999	\$4,271	\$1,302	\$308	3.28x	13.86x
Strategic Education, Inc.	2,324	2,356	1,358	275	1.74x	8.57x
American Public Education, Inc.	619	232	411	49	.56x	4.73x
Perdoceo Education Corporation	936	397	867	199	.46x	2.00x
<i>Private University - U.S. Listed</i>					Median	1.15x
					Mean	1.51x

Private University - Internationally Listed

iPeople, inc.	\$191	\$219	\$78	\$25	2.81x	8.74x
Humansoft Holding Company K.S.C.P.	1,716	1,519	404	290	3.76x	5.24x
China Xinhua Education Group Limited	436	450	101	82	4.47x	5.45x
Arab International Co. For Education & Investment P.L.C.	188	231	39	16	5.99x	14.56x
Shanghai Gench Education Group Limited	345	472	120	63	3.94x	7.43x
Chen Lin Education Group Holdings Limited	390	560	70	30	7.94x	18.45x
<i>Private University - Internationally Listed</i>					Median	4.21x
					Mean	4.82x
<i>Private University - U.S. Listed and Internationally Listed</i>					Minimum	.46x
					Maximum	7.94x
					Median	3.52x
					Mean	3.50x

EV Range

Normalized Revenue	\$2,200,000	\$2,200,000
Selected Multiple	1.25x	1.75x
Selected EV Range	\$2,750,000	\$3,850,000

Source: Capital IQ

Appendix C – Adjusted Book Value of Ongoing Business Operations

Operating Book Value of Equity

	<u>Value</u>
Book Value of Operating Assets as of April 30, 2021	
Cash and Cash Equivalents	\$ 1,014,954
Accounts Receivables	\$ 142,835
Other Current Assets	\$ 13,352
Fixed Assets	<u>\$ 2,623,119</u>
	\$ 3,794,260
 Book Value of Operating Liabilities as of April 30, 2021	
Accounts Payables	\$ 691,148
Credit Cards	\$ 116
Other Current Liabilities	<u>\$ 392,452</u>
	\$ 1,083,716
 Book Value of Equity - Operating	 \$ 2,710,544

Source: Management's internally prepared balance sheet as of April 30, 2021

May 2020 through April 2021

	<u>Estimated P&L Going Forward [1]</u>	<u>Adjustments</u>	<u>Normalized</u>	<u>Notes</u>
Income				
Government grants	491,219	-	491,219	
Tuition Fees			-	
Spring Tuition	265,579	-	265,579	
Fall/Winter Tuition	1,288,711	-	1,288,711	
Theology	21,947	(21,947)	-	[2]
Material Fees	91,148	-	91,148	
Total Tuition Fees	1,667,385	(21,947)	1,645,439	
Other Fees	90	-	90	
Donations & Non-Government Grants	57,992	-	57,992	
Sales of Services and Products	119	-	119	
Investment Income	1,860	-	1,860	
Other Revenue	635	-	635	
Total Income	2,219,300	(21,947)	2,197,354	

Source: Management's internally prepared financials, Discussions with Management

1. Based on Management's internally prepared profit and loss for the fiscal year ended April 30, 2021

2. Theology tuition is excluded as this department operates independently from Laurentian

	FYE <u>30-Apr-19</u>	FYE <u>30-Apr-20</u>
Revenue		
Government grants	811,416	568,771
Fees - general	1,838,838	1,710,095
Fees - School of Theology	31,368	22,577
Residence	401,203	362,266
Donations	64,984	67,783
Investment	232,036	205,254
Miscellaneous	35,471	18,947
Total Revenue	3,415,316	2,955,693
Expenses		
Salaries and benefits	2,468,225	2,439,079
Operating costs	367,742	280,766
Provision for sabbatical leave	80,050	176,641
Laurentian University Service Charge	165,898	358,086
Faculty professional allowances	65,274	40,605
Office supplies and maintenance	23,919	7,586
Professional services	20,313	28,484
Travel	16,811	25,030
Bursaries and scholarships	39,615	40,078
Amortization of capital assets	129,552	133,452
Total Expenses	3,377,399	3,529,807
Unrealized gain (loss) on investments	359134	-337598
Excess (defecency) of revenue over expenses	<u>397,051</u>	<u>(911,712)</u>

	As of <u>30-Apr-19</u>	As of <u>30-Apr-20</u>	As of <u>30-Apr-21</u>
ASSETS			
Current Assets			
Cash and Cash Equivalents	\$689,807	\$942,624	\$1,014,954
Accounts Receivables	510,097	445,116	142,835
Other Current Assets	16,762	113,535	13,352
Total Current Assets	1,216,666	1,501,275	1,171,141
Non-Current Assets			
Fixed Assets	2,737,850	2,752,506	2,623,119
Investments	9,520,250	8,469,828	8,759,193
Investments - Land Held for Resale	45,000	45,000	45,000
Post-Employment Benefits Asset		\$-	130,636
Total Non-Current Assets	12,303,100	11,267,334	11,557,948
TOTAL ASSETS	\$13,519,766	\$12,768,610	\$12,729,089
LIABILITIES AND SHAREHOLDER'S EQUITY			
Current Liabilities			
Accounts Payables	\$435,777	\$65,002	\$691,148
Credit Cards	-	3,004	116
Other Current Liabilities	453,212	970,370	392,452
Total Current Liabilities	888,989	1,038,376	1,083,716
Non-Current Liabilities			
Post-Employment Benefits Liability	701,236	128,073	\$-
Accrued Pension Liability	-	792,219	-
Total Non-Current Liabilities	701,236	920,292	\$-
Total Shareholder's Equity	-	10,810,942	11,645,373
TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY	\$1,590,225	\$12,769,610	\$12,729,089

	Total Restricted Funds	Non-Restricted Funds	Total funds
Total All Funds	1,943,230	6,671,894	8,615,124

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Source: Management's internally prepared financials

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As at April 30, 2021

	Restricted Funds	Non-Restricted Funds	Total funds
Library Fund	102,004	-	102,004
Theatre Fund	-	63,686	63,686
Women's Studies Fund	-	2,863	2,863
Distance Education Fund	-	2,234	2,234
Thorneloe School of Theology	-	16,757	16,757
Chapel Fund	-	12,883	12,883
Discretionary Strategic Reserve	-	2,887,747	2,887,747
Plant Fund	-	653,543	653,543
Celebration Walk Tree Fund	1,979	-	1,979
Bursary Fund	61,451	-	61,451
E.D. Ted Evans Fund	21,165	-	21,165
Marion Charlotte Higgins Fund	37,985	-	37,985
Alice Claridge Estate	5,300	-	5,300
Alumni Scholarship Fund	11,473	-	11,473
Peterson Ministry Fund	50,838	-	50,838
IODE Bursary Fund	3,416	-	3,416
Brian Clark Bursary Fund	2,408	-	2,408
Arthur J Grout Estate	19,173	-	19,173
Carolyn Fouriezors Bursary	14,562	-	14,562
Don Brown Bursary Fund	20,801	-	20,801
Stanley G. Mullins Bursary Fund	6,413	-	6,413
F. Culliford Bursary Fund	9,421	-	9,421
Tooke Scholarship	8,685	-	8,685
Resurrection Theology Bursary	22,878	-	22,878
Resurrection Legacy Bursary	13,182	-	13,182
Betty Freelandt Bursary Fund	1,853	-	1,853

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Continued ...

Source: Management's internally prepared financials

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	Restricted Funds	Non-Restricted Funds	Total funds
St. Lazarus Ecumenical Bursary	12,400	-	12,400
Sueanne Checkeris Scholarship	1,144	-	1,144
St. Chad-Moosonee Bursary	11,431	-	11,431
Ulrich Sikora Memorial Bursary	800	-	800
Hillary Afelskie Memorial Burs.	2,415	-	2,415
Tombalakian Bursary	12,393	-	12,393
Ronald L Trolve Bursary	2,684	-	2,684
Academic Trust Fund	-	3,011,155	3,011,155
Clair Jory Wood Scholarship	6,855	-	6,855
E Checkeris Bursary Fund	12,994	-	12,994
MacLennan Medal	413	-	413
Chapel Organ Fund	-	21,026	21,026
Loukidelis Adjunct Fund	22,628	-	22,628
Loukidelis Classics Endowment	180,960	-	180,960
Murray Estate Bursary Fund	228,255	-	228,255
Dr. S. Katary Lecture	2,535	-	2,535
OSOTF Student Opportunity Fund	15,294	-	15,294
OSOTF II Opportunity Fund	8,915	-	8,915
OTSS Fund	80,700	-	80,700
Student Awards	133,995	-	133,995
Dr. S. Katary Memorial Lecture	106,060	-	106,060
OSOTF Student Opportunity Fund	38,890	-	38,890
OSOTF II Endowment Fund	22,463	-	22,463
OTSS Endowment Fund	175,760	-	175,760
Loukidelis Classics Endowment	82,925	-	82,925
Murray Estate Bursary Fund	110,705	-	110,705
Resurrection Theology Bursary	44,000	-	44,000
Resurrection Legacy Bursary	17,000	-	17,000
McLaughlin Endowment	195,229	-	195,229
Thorneloe University Funds	1,943,230	6,671,894	8,615,124

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Source: Management's internally prepared financials

Appendix H – Comparable Companies Risk Ranking Analysis

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U.S. Listed Universities

Internationally Listed Universities

Thorneloe

Size		
Enterprise value (\$M CAD)		
Laureate Education, Inc.	4,271.1	
Strategic Education, Inc.	2,356.2	
Humansoft Holding Company K.S.C.P.	1,518.7	
Perdoceo Education Corporation	397.4	
Chen Lin Education Group Holdings Limited	559.6	
Shanghai Gench Education Group Limited	471.7	
China Xinhua Education Group Limited	449.6	
American Public Education, Inc.	232.0	
iPeople, inc.	218.8	
Arab International Co. For Education & Investment P.L.C.	230.6	
Thorneloe University	9.8	

Liquidity		
Current Ratio		
American Public Education, Inc.	6.5	
Humansoft Holding Company K.S.C.P.	5.9	
Perdoceo Education Corporation	4.7	
China Xinhua Education Group Limited	5.9	
Strategic Education, Inc.	1.6	
Laureate Education, Inc.	1.5	
iPeople, inc.	1.4	
Thorneloe University	1.1	
Chen Lin Education Group Holdings Limited	1.1	
Shanghai Gench Education Group Limited	1.2	
Arab International Co. For Education & Investment P.L.C.	0.4	

Leverage		
Total Debt / Equity %		
Shanghai Gench Education Group Limited	65%	
Chen Lin Education Group Holdings Limited	35%	
iPeople, inc.	29%	
Laureate Education, Inc.	22%	
Strategic Education, Inc.	17%	
China Xinhua Education Group Limited	14%	
Perdoceo Education Corporation	6%	
Arab International Co. For Education & Investment P.L.C.	6%	
American Public Education, Inc.	2%	
Humansoft Holding Company K.S.C.P.	2%	
Thorneloe University	0%	

Size		
LTM Revenue		
Strategic Education, Inc.	1,357.9	
Laureate Education, Inc.	1,302.1	
Perdoceo Education Corporation	866.6	
American Public Education, Inc.	410.8	
Humansoft Holding Company K.S.C.P.	403.5	
Shanghai Gench Education Group Limited	119.6	
China Xinhua Education Group Limited	100.5	
iPeople, inc.	77.9	
Chen Lin Education Group Holdings Limited	70.5	
Arab International Co. For Education & Investment P.L.C.	38.5	
Thorneloe University	2.2	

Growth		
LTM Revenue Growth		
Humansoft Holding Company K.S.C.P.	60%	
Chen Lin Education Group Holdings Limited	40%	
American Public Education, Inc.	11%	
Shanghai Gench Education Group Limited	18%	
China Xinhua Education Group Limited	15%	
Strategic Education, Inc.	7%	
Perdoceo Education Corporation	6%	
Arab International Co. For Education & Investment P.L.C.	-1%	
Laureate Education, Inc.	-7%	
iPeople, inc.	-11%	
Thorneloe University	-22%	

Profitability		
LTM EBITDA Margin		
China Xinhua Education Group Limited	82%	
Humansoft Holding Company K.S.C.P.	72%	
Shanghai Gench Education Group Limited	53%	
Chen Lin Education Group Holdings Limited	43%	
Arab International Co. For Education & Investment P.L.C.	41%	
iPeople, inc.	32%	
Laureate Education, Inc.	24%	
Perdoceo Education Corporation	23%	
Strategic Education, Inc.	20%	
American Public Education, Inc.	12%	
Thorneloe University	-29%	

Size		
LTM EBITDA		
Laureate Education, Inc.	308.2	
Humansoft Holding Company K.S.C.P.	289.9	
Strategic Education, Inc.	274.9	
Perdoceo Education Corporation	199.2	
China Xinhua Education Group Limited	82.4	
Shanghai Gench Education Group Limited	63.5	
American Public Education, Inc.	49.0	
Chen Lin Education Group Holdings Limited	30.3	
iPeople, inc.	25.0	
Arab International Co. For Education & Investment P.L.C.	15.8	
Thorneloe University	- 0.6	

Growth		
LTM EBITDA Growth		
Humansoft Holding Company K.S.C.P.	127%	
Laureate Education, Inc.	91%	
China Xinhua Education Group Limited	38%	
Shanghai Gench Education Group Limited	20%	
American Public Education, Inc.	10%	
Perdoceo Education Corporation	7%	
Arab International Co. For Education & Investment P.L.C.	-3%	
iPeople, inc.	-4%	
Chen Lin Education Group Holdings Limited	3%	
Strategic Education, Inc.	-15%	
Thorneloe University	NMF	

Source: Capital IQ

Laureate Education, Inc., together with its subsidiaries, provides higher education programs and services to students through a network of universities and higher education institutions. It offers a range of undergraduate and graduate degree programs primarily in the areas of business and management, medicine and health sciences, and engineering and information technology through campus-based, online, and hybrid programs. The company provides its services in Brazil, Mexico, Chile, Peru, and the United States.

Strategic Education, Inc., through its subsidiaries, provides post-secondary education and non-degree programs. It operates in three segments: Strayer University, Capella University, and Australia/New Zealand. The company operates Strayer University that provides undergraduate and graduate degree programs in business administration, accounting, information technology, education, health services administration, public administration, and criminal justice for working adult students through its 64 physical campuses located in the eastern United States, as well as through online; and an executive MBA online through its Jack Welch Management Institute.

American Public Education, Inc., together with its subsidiaries, provides online and campus-based postsecondary education. The company operates in two segments, American Public Education and Hondros College of Nursing. It offers 129 degree programs and 112 certificate programs in various fields of study, including business administration, health science, technology, criminal justice, education, and liberal arts, as well as national security, military studies, intelligence, and homeland security.

Source: Capital IQ

Perdoceo Education Corporation provides postsecondary education to student through online, campus based, and blended learning programs in the United States. It operates through two segments, Colorado Technical University and American InterContinental University. The company offers academic programs in the career-oriented disciplines of business and management, nursing, healthcare management, computer science, engineering, information systems and technology, project management, cybersecurity, criminal justice, education, and health sciences.

iPeople, inc., together with its subsidiaries, engages in the education business in the Philippines. The company operates Mapúa University, an engineering and technological university; Malayan Colleges Laguna that offers programs in engineering, computer science, information technology, business, accountancy, and hotel and restaurant management located in Cabuyao, Laguna; Malayan Colleges Mindanao, a school situated in Davao and Mindanao; and Malayan High School of Science, a high school that provides secondary education in the area of science, technology, and mathematics located in Manila.

Humansoft Holding University K.S.C.P., together with its subsidiaries, establishes and operates universities and colleges, and private training institutes in Kuwait and internationally. The company operates through Training and Career Development Programs, English Training, Learning Solutions, and Higher Education segments. It provides computer education and executive training courses; and computer programming, advertisement, publication and distribution, technology, e-commerce, media, and administrative business training services.

Source: Capital IQ

China Xinhua Education Group Limited provides higher education services in the People's Republic of China. As of December 31, 2020, it invested in and operated four educational institutions, which include Xinhua University, an university-level education institution that offers undergraduate, junior college, and continuing education focusing on applied sciences; Xinhua School, a private secondary vocational school, which provides general, undergraduate oriented, and five-year junior college oriented secondary vocational education programs, as well as vocational education programs; School of Clinical Medicine, an independent college to train full-time undergraduate students; and Hongshan College, an independent college to train full-time undergraduate students.

Arab International Co. For Education & Investment P.L.C. engages in the establishment of private universities in Jordan. It is involved in the preparation of students as specialists in the technological fields mainly inlaid with human and social studies. The company operates its educational activities through the Applied Science University.

Shanghai Gench Education Group Limited, an investment holding company, provides higher education services in the People's Republic of China. The company primarily operates a private university in Shanghai. It provides education services to its students with a focus on applied sciences. The company also provides common undergraduate education services.

Source: Capital IQ

Chen Lin Education Group Holdings Limited provides private tertiary education services in the People's Republic of China. It operates Jiangxi University of Applied Science, a private university; and Jiangxi Wenli Jishi College, a full-time vocational college that provide undergraduate, junior college, and vocational programs, as well as various education related services.

Source: Capital IQ

Glenn M. Bowman, *Senior Managing Director*

Mr. Bowman is a Senior Managing Director with Farber. He oversees valuations, investment banking, financial advisory and financial restructuring engagements and has been involved in over 2,000 assignments. Mr. Bowman was formerly a Managing Director at CCC Investment Banking, the Managing Partner at Capital Canada Limited and the President and Director of Houlihan Lokey Howard & Zukin Canada, the Toronto office of Houlihan Lokey.

Educational & Professional Affiliations

Bachelor of Arts, 1979, *University of Toronto*

Chartered Accountant, 1982, *Member of the Institute of Chartered Accountants of Ontario*

Chartered Business Valuator, 1987, *Member of the Canadian Institute of Chartered Business Valuators*

Member, 1989, *American Society of Appraisers*

Member, 1992, *Arbitration and Mediation Institute of Ontario Inc.*

Fellow Chartered Accountant, 2006, *Fellows of the Institute of Chartered Accountants of Ontario*

Corporate Finance Qualification, 2006, *The Canadian Institute of Chartered Accountants*

Chartered Professional Accountant, 2012, *Member of the Chartered Professional Accountants of Ontario*

Fellow Chartered Professional Accountant, 2012, *Fellows of the Chartered Professional Accountant of Ontario*

Continued ...

Other Professional Involvement

Speaker on acquisition and divestiture, corporate finance, valuation and litigation support matters to a variety of groups such as the Arbitration and Mediation Institute of Ontario, banks, Canadian Bar Association, Ontario – Continuing Legal Education Program, Canadian Institute of Chartered Business Valuators, Executive Forum of Wilfrid Laurier University and the University of Western Ontario, Federated Press, Federation of Law Societies, Infonex, Insight Information Inc., Insurance Companies, Louis Paul Nolet & Associates and Ontario Expropriation Association.

Interviewed by The Wall Street Journal; Report on Business, Globe & Mail; Financial Post; CBC Newsworld, Business News and Business World; and CBC Daybreak discussing mergers and acquisitions in Canada and the United States.

Author of various articles on acquisition and divestiture, business valuation and litigation support matters.

Lecturer: MBA programs at University of Toronto and York University; The Law Society of Upper Canada (Bar Admission) Accounting Course; The Chartered Accountants Students Association of Ontario (CASAO); and the Ontario School of Accountancy (1978 – 1990).

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TAB 3



December 17, 2021

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2819
ahatnay@kmlaw.ca

Via E-Mail

Sharon Hamilton
Ernst & Young Inc.
CCAA Monitor of Laurentian University
100 Adelaide St. West, P.O. Box 1
Toronto, ON M5H 0B3

Dear Ms. Hamilton:

**Re: Laurentian University CCAA, Court File No. CV-21-656040-00CL
Proof of Claim of Thorneloe University**

We are writing further to the Proof of Claim form we submitted on behalf of our client, Thorneloe University in the Claims Process of Laurentian University, and in particular, with respect to the claim amount for the loss to Thorneloe's academic and commercial value caused by the disclaimers issued by Laurentian under section 32 of the CCAA in respect of its agreements with Thorneloe. At the time of the claim filing, we included an estimated amount for the loss to Thorneloe's academic and commercial value in the amount of \$11,479,624, subject to change pending the preparation of a final valuation report by Farber Corporate Finance Inc., a professional business valuation firm. Please find enclosed the final Estimate Valuation Report as of April 30, 2021, which we submit on behalf of Thorneloe University which concludes (on page 70) that the valuation of the academic and commercial loss to Thorneloe is \$9.8 million.

Accordingly, we wish to amend this component of Thorneloe's Proof of Claim from \$11,479,624 to \$9.8 million, as supported by the above-noted Farber valuation report.

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

Andrew J. Hatnay
AJH/vdl: encl.

c. Client
Allan Nackan, *Farber Group*

FARBER



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Thorneloe University

Estimate Valuation as of April 30, 2021

October 2021 | PRIVATE & CONFIDENTIAL

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Section I Assignment

Thorneloe University (“**Thorneloe**” or the “**University**”) has requested that Farber Corporate Finance Inc. (“**Farber**”) provide our estimate of Enterprise Value (“**Estimate Valuation**”) of Thorneloe on or about April 30, 2021 (“**Valuation Date**”), being that date on which Laurentian delivered disclaimers of the Thorneloe Federation Agreement and Financial Distribution Notice pursuant to section 32(7) of the CCAA.

We understand that our report will be used in connection with filing a claim for loss of Thorneloe’s academic and commercial value/business value as a part of its proof of claim in the claims process in Laurentian University’s (“**Laurentian**”) CCAA proceedings.

Section II

Engagement

Farber was retained by Thorneloe pursuant to an engagement agreement dated July 15, 2021 (the “**Engagement Agreement**”) to provide the Estimate Valuation for the purpose of a Claim For Loss. Farber will receive a fee for its services for providing the Estimate Valuation and will be reimbursed for its reasonable out-of-pocket expenses. Pursuant to the Engagement Agreement, Farber may receive additional fees for any additional services rendered after the delivery of the Estimate Valuation. The University has agreed to indemnify Farber, in certain circumstances, against certain expenses, losses, claims, actions, suits, proceedings, damages and liability which may arise directly or indirectly from services performed by Farber in connection with the Engagement Agreement. Fees payable to Farber are not contingent in whole or in part on the occurrence of any event or on the conclusions reached in the Estimate Valuation.

Section III

Credentials of Farber

Farber is a Canadian investment banking firm that provides investment banking services in the areas of business and securities valuations, financial opinions, corporate finance, and acquisitions, divestitures and mergers of middle-market companies. Farber has experience in transactions involving valuations and fairness opinions of private and publicly-traded companies.

The Estimate Valuation represents the views of Farber and its form and content have been approved by senior investment banking professionals of Farber, each of whom is experienced in merger, acquisition, divestiture, equity and debt capital markets, and valuation and fairness opinion matters.

Section IV

Independence of Farber

Farber is not: (i) an associated or affiliated entity of the University or an issuer insider (collectively, “Interested Parties”); (ii) an advisor to the Interested Parties or any of its associates or affiliates in connection with the preparation of the Estimate Valuation; (iii) a manager, co-manager or member of a soliciting dealer group in connection with the entity; (iv) an external auditor of the University or any Interested Parties.

Farber does not have a financial interest in (i) the Interested Parties, or (ii) the completion of the Estimate Valuation.

A. Farber & Partners Inc., an affiliated company of Farber Corporate Finance, has acted as financial advisor to Thorneloe to advise on Laurentian’s CCAA process. Notwithstanding, Farber Corporate Finance has prepared its own independent preparation of the Estimate Valuation.

Farber does not have any agreements, commitments or understandings in respect of any future business involving any of the Interested Parties. However, Farber may, from time to time in the future, seek or be provided with assignments from one or more of the Interested Parties.

The fees payable to Farber in connection with the Engagement Agreement are not contingent on the conclusions reached in the Estimate Valuation.

Farber is of the view that it is qualified and independent of the Interested Parties for the purposes of this engagement.

Section V

Currency

All amounts included in the Estimate Valuation are expressed in Canadian dollars unless otherwise specified.

Section VI

Restrictions and Qualifications

The Estimate Valuation has been prepared for the above-noted matter and, except as explicitly permitted herein, is not to be used for any purpose other than stated and is not intended for general circulation, nor is to be published or made available to other parties in whole or in part without Farber's prior written consent. Farber does not assume any responsibility for losses resulting from unauthorized or improper use of Estimate Valuation.

Farber has not completed sufficient work to permit it to express a formal opinion of the fair market value of the University. Based on the specific purpose of the valuation, Farber has completed its review to enable it to provide a reasonable estimate of the fair market value of the University for the stated purpose.

The financial statements and other information provided by President, Provost, Director of Finance, and Vice-Chancellor of the University ("**Management**"), have been accepted, without further verification, as correctly reflecting the business conditions and operating results of the University for the respective periods, except as noted herein.

In the completion of the Estimate Valuation, Farber has used Management's internally prepared balance sheet as of April 30, 2021 and Management's internally prepared profit and loss for the period from May 2020 through April 2021. Farber's estimate of value of the University is based on the assumptions that no material changes have taken place in operating or asset positions of the University that have not been brought to Farber's attention since the date of the financial information utilized by Farber.

Continued ...

Management has represented to Farber that, to the best of its knowledge, the information, financial or otherwise, provided to Farber, was true, complete and accurate in all material respects. Management has been requested to bring to Farber's attention any matters that would be significant to the Estimate Valuation, in addition to those matters discussed herein.

Farber has not made any physical inspection or independent appraisal of any of the assets of the University.

Farber has not been requested to, and did not, solicit third party indications of interest to acquire any or all of the ownership interests of the University.

The Estimate Valuation is rendered as of the date hereof on the basis of securities markets, economic, general business and financial conditions prevailing on or about the Valuation Date. The Estimate Valuation has been rendered on the condition and prospects, financial and otherwise, of the University as they were represented to Farber. Public information and industry and statistical information are from sources Farber considers to be reliable. Farber makes no representations as to the accuracy or completeness of such information. Farber disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting its estimates, which may come to Farber's attention after the date hereof.

No opinion, counsel or interpretation is intended in matters that require legal or other appropriate professional advice. It is assumed that such opinions, counsel or interpretations have been, or will be, obtained from the appropriate professional sources.

Continued ...

Farber disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting its opinion, which may come to Farber's attention after the date hereof.

Farber reserves the right to make revisions and/or further support its conclusions, if Farber considers it to be necessary for any reason, such as when facts existing at the date hereof become known to Farber after the issuance of the Valuation.

The Estimate Valuation is not, and should not be considered to be, a recommendation to shareholders, or to others, to take any course of action. The Estimate Valuation has been prepared solely for the purposes stated, it may not have considered issues relevant to third parties and Farber shall have no responsibility whatsoever to any third party. Any use a third party makes of this Estimate Valuation is entirely at its own risk.

The novel coronavirus pandemic ("**COVID-19**") is affecting economic and financial markets, and virtually all industries are facing changes associated with the economic and social conditions resulting from it. As the pandemic increases in both magnitude and duration, it creates challenges in conducting valuation engagements as valuation analysis herein is based on financial, economic, market and other conditions made available to us on or before, the Valuation Date. At the current time, forecasts for economic growth are uncertain as the severity and extent of financial, economic, market and other impacts of the pandemic remain unknown, therefore Farber's valuation conclusion may be materially affected if COVID-19, and the resulting impacts from COVID-19, becomes significantly more severe or prolongs for an extended period.

Section VII

Fair Market Value

For the purposes of this assignment, Farber, has been guided by the concept of “Fair Market Value”. This concept is defined as the highest price, expressed in terms of money or money’s worth, obtainable in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to transact.

Section VIII

Scope of Review

Farber has been provided with information, data, opinions and other materials regarding the University prepared by Management in addition to information available from public sources (the “**Information**”).

Farber’s review consisted primarily of inquiry, review, analysis, and discussion of the Information. As well, Farber referred to and made use of general industry and economic information obtained from other sources considered reliable and necessary in the circumstances. Based on discussions with Management, the University exhibited a significant change in operations in 2019 and therefore financials have not been reviewed for fiscal years prior to 2019.

In connection with the Estimate Valuation, Farber has made such reviews, analyses and inquiries as it has deemed necessary and appropriate in the exercise of its professional judgement, without attempting to verify independently the completeness or accuracy thereof. Farber reviewed and relied upon the documentation and discussions held as set out below:

As it relates to the University:

General

- i. University overview and marketing materials retrieved from www.thorneloe.ca
- ii. Report on Financial Impact of Termination of Federation Agreement and Financial Distribution Agreement on Thorneloe University prepared by A. Farber & Partners Inc. “**Farber Insolvency & Restructuring**” dated April 19, 2021
- iii. Supplementary Report in relation to Monitor’s Report prepared by Farber Insolvency & Restructuring dated April 26, 2021
- iv. Discussions with Mary Cornthwaite, Director of Finance at Thorneloe, and John Gibaut, Chancellor at Thorneloe

Continued ...

FARBER

Financial

- i. Audited financial statements for fiscal years ended April 30, 2019 and 2020
- ii. Management's internally prepared balance sheet as of April 30, 2021
- iii. Management's internally prepared profit and loss for the period from May 2020 through April 2021
- iv. Management's internally prepared summary of restricted and non-restricted funds available to Thorneloe as at April 30, 2021

Market Data

- i. Capital IQ database – all market data has been retrieved as of April 30, 2021

Industry and Economic Analysis

- i. Statistics Canada analysis of the Canadian economy as of April 2021
- ii. IBIS World Colleges & Universities in Canada Market Research Report dated July 28, 2020
- iii. Statistics Canada summary of Ontario University tuition fees for full-time Canadian and international students in an arts and humanities program, 2020/2021 academic year

Continued ...

Section IX

Prior Valuations

The University has represented to Farber that, among other things, it has no knowledge of any prior valuations or appraisals of the University, its securities, or any material assets of the University made in the past 24 months.

Section X

Assumptions, Limitations and Major Considerations

For the purposes of the Estimate Valuation, considering the operations of Thorneloe immediately prior to the termination of the Federation Agreement with Laurentian, Farber made the following assumptions, all of which Farber considered reasonable in the exercise of its professional judgment:

- i. *Economic conditions will not significantly deteriorate beyond remediation.* Farber has assumed that economic conditions and business risks will not deteriorate beyond Management's ability to undertake remedial actions.
- ii. *Ownership of intellectual property is included in the enterprise valuation.* Farber has considered that a hypothetical purchaser would not attribute value to the business unless all intellectual property could be acquired with the enterprise.
- iii. *The University can access and retain employees with the necessary skills.* Farber has assumed that Management will have the ability to attract and keep employees with the skills and experience necessary to compete in the industry.
- iv. *The business will not be impacted by the departure of key personnel.* Farber has assumed that should key employees depart from the business, appropriate transfer of knowledge would occur to allow the business to continue operating without negatively impacting earnings.

Continued ...

A senior officer of the University has represented to Farber in writing that, among other things:

- i. the Information provided to Farber by the University for the purposes of preparing the Estimate Valuation was complete and correct in all material respects at the date the Information was provided to Farber;
- ii. the Information did not contain any untrue statement of a material fact in respect of the University;
- iii. the Information did not omit to state a material fact in respect of the University necessary to make the Information not misleading in light of the circumstances under which the Information was provided;
- iv. since the date that the Information was provided to Farber, there has been no material change, financial or otherwise, in the University's business that has not been disclosed to Farber and there has been no change of any material fact which is of a nature as to render the Information untrue or misleading in any material respect;
- v. since the date of the Information, no material transactions have been entered into by the University, except in the normal course of business;

Continued ...

- vi. other than as disclosed in the Information, the University does not have any material contingent liabilities out of the ordinary course of business;
- vii. other than as disclosed in the Information, there are no actions, suits, proceedings or inquiries, pending or threatened, against or affecting the University, or any of their respective assets at law or in equity or before or by any federal, provincial, municipal or other government department, commission, board, bureau, agency or instrumentality which may in any way materially affect the University;
- viii. there have been no offers or negotiations for the purchase of the assets of the University or for all or a material part of the University within the two years preceding the date hereof which have not been disclosed to Farber;
- ix. all financial material, documentation and other data (excluding the information referred to in the next paragraph) concerning the University and provided to Farber by the University are complete, true and correct in all material respects, and did not and does not contain any untrue statement of a material fact and did not and does not omit to state a material fact necessary to make any statement contained therein not misleading in light of the circumstances under which any statement was made; and

Continued ...

- x. all projections, forecasts and models concerning the University and provided to Farber by the University: (a) were reasonably prepared on bases reflecting the best currently available estimates and judgment of the University; (b) were prepared using the assumptions identified therein or otherwise disclosed to Farber, which in the reasonable belief of the management of the University are (or were at the time of preparation) reasonable in the circumstances; (c) were prepared with special consideration of the potential impacts of COVID-19 and (d) are not, in the reasonable belief of Management, misleading in any material respect in light of the assumptions used or in light of any developments since the time of their preparation which were disclosed to Farber.

Section XI

General Economic Conditions

The Canadian Economy is exhibiting a rebound after its steepest decline in decades due to COVID-19. While the country is nearing its pre-pandemic levels of output, there is uncertainty as to the long term impacts of COVID-19 and the extent to which variants of the virus may further impede economic growth.

Real GDP, January 2007 to March 2021

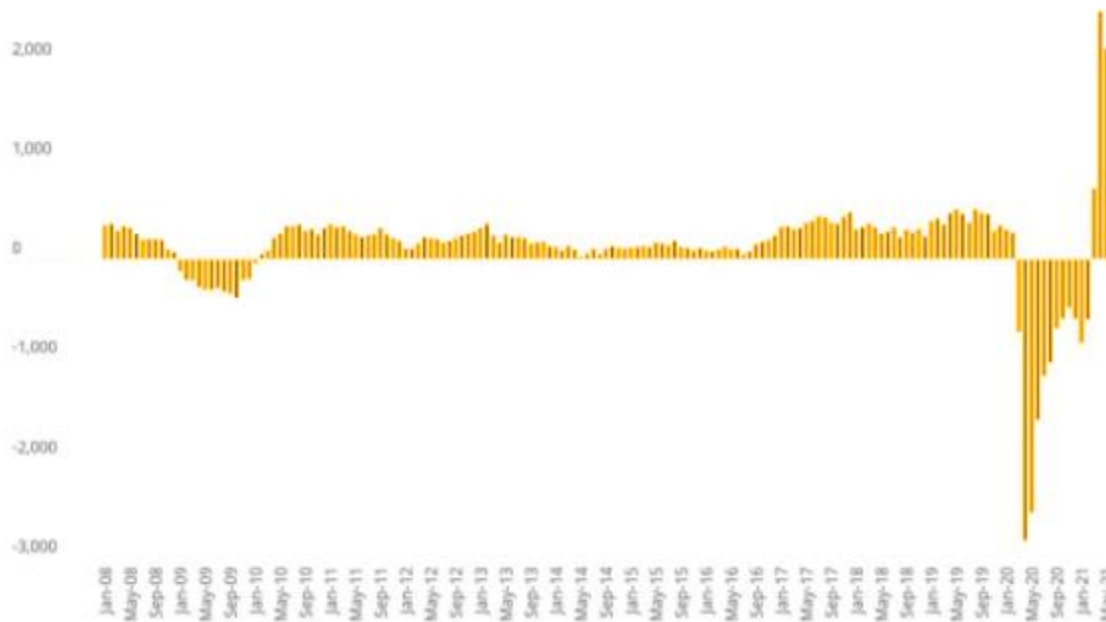
Billions, chained \$



Source: Statistics Canada

Employment fell for a second consecutive month in May 2021 with approximately 500,000 fewer Canadians employed as compared to February 2020. As compared to May 2020, shortly after the onset of the COVID-19, over 2 million more Canadians were employed year-over-year in May 2021.

Year-over-year change in employment, January 2008 to May 2021
000s of jobs



Source: Statistics Canada

The residential real estate market has exhibited record-breaking activity, both in declines and rapid growth, since the onset of COVID-19. After months of sharp increases in units sold, the resale market has begun to cool off as of May 2021.

Units sold

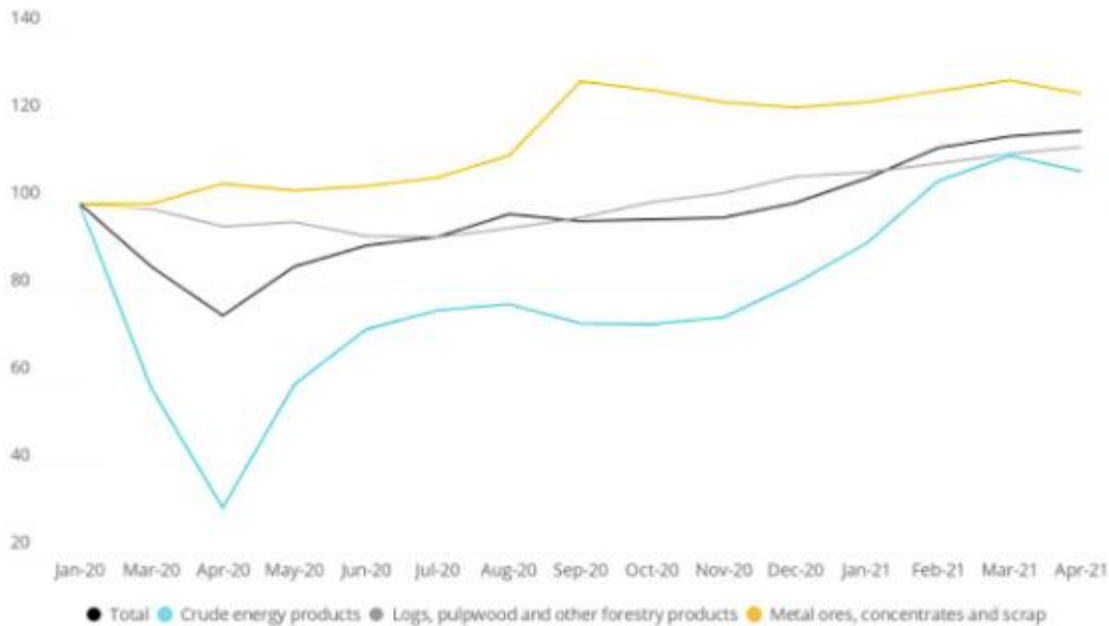


Source: Statistics Canada

Commodity prices are trending upwards, benefitting numerous Canadian producers.

Raw materials price index by category

Index: January 2020 = 100



Source: Statistics Canada

Beyond mid-August 2021, predicting the course of global economies and monetary policies are substantially difficult. Financial markets and the broader economy depend on the ongoing and future impacts of COVID-19.

There is uncertainty as to the extent of the COVID-19 impact on global economies and monetary policies for the short and medium term

Section XII

General Industry Overview

Market Size

\$44BN

Number of Businesses

262

Industry Employment

318,727

The Colleges and Universities industry in Canada includes public and private institutions that grant certificates, associate degrees, baccalaureate degrees, and graduate degrees. The overall industry has experienced growth over the five years to 2020 as rising student enrolment, coupled with higher tuition fees, have largely offset declining levels of government funding. According to Statistics Canada, average tuition fees have experienced steady growth over the five years to 2020, with average tuition costs for the typical Canadian undergraduate student rising 3.1% during the 2017-18 academic year alone.

The industry is expected to experience marginal growth over the next five years. In the long run as Canada recovers from the COVID-19 pandemic, a healthier economy may lead to increased government funding allocated to post-secondary institutions. Private sector profit is expected to increase over the next five years and in tandem, research and development expenditure is also expected to increase as the economy resurges in a post-coronavirus world. An increase in research and development activity may translate to an increase in research grants for Canadian universities.

Source: IBIS World Colleges & Universities in Canada Market Research Report dated July 28, 2020

Ontario University tuition fees (Canadian dollars) for full-time Canadian and international students in an arts and humanities program, 2020/2021 academic year.

University	Undergraduate Domestic Students	Undergraduate International Students	Graduate Domestic Students	Graduate International Students
Algoma University	\$5,865 - \$5,865	\$18,287 - \$18,287		
Brock University	\$5,917 - \$6,089	\$27,886 - \$27,886	\$5,850 - \$8,176	\$23,504 - \$23,504
Carleton University	\$6,067 - \$9,614	\$26,268 - \$36,457	\$4,952 - \$6,514	\$13,060 - \$16,274
Lakehead University	\$5,398 - \$5,985	\$25,000 - \$25,000	\$4,894 - \$5,390	\$15,334 - \$15,334
Laurentian University (excludes Hearst University)	\$5,678 - \$6,000	\$25,309 - \$25,960	\$5,353 - \$5,721	\$12,961 - \$14,361
McMaster University	\$5,955 - \$6,043	\$29,139 - \$33,852	\$6,307 - \$6,307	\$6,037 - \$17,096
Nipissing University	\$5,781 - \$5,781	\$19,325 - \$19,325	\$8,506 - \$8,506	\$18,350 - \$18,350
OCAD University	\$6,052 - \$6,052	\$25,455 - \$25,455	\$16,670 - \$16,670	\$33,123 - \$33,123
Ontario Tech University	\$9,159 - \$9,390	\$28,346 - \$31,469	\$7,579 - \$8,860	\$19,166 - \$25,074
Queen's University	\$6,083 - \$6,083	\$41,053 - \$48,500	\$5,773 - \$5,773	\$12,927 - \$12,927
Ryerson University	\$6,093 - \$6,110	\$26,964 - \$27,300	\$4,307 - \$16,278	\$21,260 - \$22,190
Trent University	\$6,118 - \$6,118	\$20,721 - \$22,454	\$5,394 - \$5,394	\$13,590 - \$13,590
University of Guelph	\$5,893 - \$6,091	\$10,703 - \$26,730	\$4,587 - \$4,993	\$5,650 - \$15,081
University of Ottawa	\$6,088 - \$6,088	\$36,161 - \$36,161	\$6,367 - \$7,798	\$16,334 - \$27,519
University of Toronto	\$6,100 - \$11,420	\$37,680 - \$58,970	\$6,210 - \$10,350	\$6,210 - \$41,470
University of Waterloo	\$6,128 - \$7,621	\$30,237 - \$40,325	\$3,504 - \$4,508	\$4,128 - \$14,508
University of Windsor	\$5,800 - \$5,800	\$25,800 - \$27,150	\$7,179 - \$7,179	\$24,255 - \$24,255
Western University (excludes colleges)	\$6,050 - \$6,050	\$29,936 - \$33,526	\$6,360 - \$6,360	\$18,612 - \$18,612
Wilfrid Laurier University	\$5,663 - \$7,081	\$26,586 - \$27,860	\$4,536 - \$11,543	\$11,511 - \$24,129
York University	\$6,118 - \$6,118	\$31,496 - \$31,496	\$2,871 - \$2,871	\$12,550 - \$12,550

Source: Statistics Canada

Section XIII

General Background of Thorneloe University



Thorneloe University, also formerly known as Thorneloe University at Laurentian, is located in Sudbury, Ontario, Canada. The University was started in 1961 when it was granted its academic charter from the Government of Ontario. Historically, the University was governed through the Senate of Laurentian University which had governing oversight and control over all programs at Thorneloe University except the School of Theology program. The School of Theology program is operated by Thorneloe independently and separately from programs offered through Laurentian. Historically, Thorneloe's primary source of income was through Government grants, tuition fees, and residence fees that flowed through Laurentian and its primary costs comprised of faculty salaries and benefits, administrative salaries and benefits, service fees paid to Laurentian, building maintenance, course writing and review, and certain other items. Based on discussions with Management, almost all of Thorneloe's revenue generation and eligibility for grants, its largest revenue source, is dependent on the continued partnership between Laurentian and Thorneloe.

In 1962, Thorneloe entered into a Federation Agreement with Laurentian. Around that time period, the University of Sudbury ("**Sudbury**"), and the University of Huntington ("**Huntington**"), also entered into Federation Agreements with Laurentian. The intention by the parties was that all four universities would be academically and administratively interconnected, operate as one university, and that the three federated universities would be able to receive public funding flowing through Laurentian.

On November 10, 1993, Laurentian, Thorneloe, Sudbury, and Huntington, entered into the Proposed Grant Distribution and Services Fees. That agreement was unilaterally amended by Laurentian with the Financial Distribution Notice, dated May 1, 2019. This notice, sets out terms for the flow of public grants and other funds to Thorneloe (and the other Federated universities) through Laurentian, pursuant to formulae in respect of the courses that Thorneloe provides that form part of Laurentian's Faculty of Arts course curriculum.

According to Management, over the past few years, various discretionary changes in Laurentian operations and policies had negatively impacted Thorneloe's financial performance including but not limited to changes to Thorneloe's funding arrangement with Laurentian and reduction of grants. Given that Thorneloe's operations were dependent on the grants received pursuant to the federated agreement with Laurentian, as Laurentian's imposed changes were made, Thorneloe Management expressed that it had no choice but to adjust, restructure, and revise operations as appropriate in order to maintain financial feasibility of its operations. Despite these adjustments, profitability still declined.

Thorneloe historically offered the following programs:

- Religious Studies
- Classical Studies
- Ancient Studies
- Women's, Gender, and Sexuality Studies
- Theatre Arts
- Motion Picture Arts
- Inter Arts (in conjunction with Laurentian University and Cambrian College)
- Theology (not connected to Laurentian)

In April 2021, Laurentian unilaterally gave notice that it intended to disclaim the Federation Agreements and the Financial Distribution Notice with Thorneloe University, University of Sudbury, and Huntington University. Thorneloe University brought a motion to court opposing the disclaimer of these agreements. The court dismissed that motion, and leave to appeal that decision was denied by the Ontario Court of Appeal.

Termination of the Federation Agreement has caused significant financial hardship to Thorneloe and the University has ceased all teaching operations with the exception of the Theology program; which does not generate significant revenues. Since it has been terminated, Thorneloe will no longer be eligible to receive government grants; one of the University's largest revenue streams. As a result, Thorneloe has terminated all of its academic staff and has only retained a small skeleton administrative staff to oversee the wind-down and possible formal insolvency of Thorneloe.

Source: Discussions with Management, Thorneloe.ca, Farber Insolvency and Restructuring Report

Section XIV

Valuation Methodology

General Principles

The fundamental premise on which all investment decisions are based is that value to a potential investor is equal to the present worth of future benefits. This basic concept can be applied to the valuation of an entire company, as well as the particular securities which comprise the capital structure of that company or the individual assets of the company. In each instance, it is a matter of identifying the future returns to the investor that the company, security or asset can be reasonably expected to generate and determining its present value in the context of the uncertainty associated with realizing these returns.

There are two bases on which to determine the value of a company: going-concern and liquidation. In the case of a company that is expected to continue operating well into the future, the prospective investor will evaluate the risks and expected returns of the investment on a going-concern basis. The investor's primary concern is not with the individual values of enterprise assets, but with their ability to generate the returns expected in the future. Only secondarily is the investor interested in individual asset values, and this is from the standpoint of security or collateral for their investment, if for any reason the company should choose to liquidate. In such a case, liquidation values for the assets as well as all costs associated with liquidation would prevail.

Continued ...

When determining the value of a business enterprise, there are three general approaches available to the valuation professional: the market approach, the income approach, and the asset approach. These are also commonly referred to as the market capitalization, discounted cash flow (“**DCF**”), and adjusted book value approaches, respectively. The choice of which approach to use in a particular situation will depend upon the specific facts and circumstances associated with the company, as well as the purpose for which the valuation analysis is being conducted.

Continued ...

Market Capitalization Approach

The market capitalization approach is a useful method of determining the fair market value of a company which is currently profitable and is expected to remain profitable in the future. This methodology may be used for closely-held private companies to determine what the company or security would be worth in the public market. In addition, it can be used to value a company as a private entity, subject to adjustments for size or liquidity. This approach provides indications of value by studying either transactions or market trading metrics of companies or securities similar to the subject company for which a value conclusion is desired.

The approach is one of determining a level of earnings which is considered to be representative of the future performance of the company, and capitalizing this figure by an appropriate risk-adjusted rate. This approach provides an indication of value for the security, which corresponds with the particular earnings figure being capitalized (for example, capitalizing net earnings available to common stockholders would yield an indication of value for the common stock).

There are several different forms of “earnings” used in the market capitalization approach, because each form isolates particular nuances of the company’s operating performance.

Hence, the various “earnings” figures used throughout this report, including EBITDA, earnings before interest and taxes (“**EBIT**”), debt-free cash flow (“**DFCF**”), debt-free earnings (“**DFE**”), cash flow (“**CF**”), and earnings (“**E**”), are all just variations of the conventional net income figure determined according to generally accepted accounting principles.

Continued ...

The capitalization rate is an expression of what investors believe to be a fair and reasonable rate of return for the particular security, given the inherent risks of ownership. It incorporates expectations of growth and rests on the implicit assumption that some level of earnings will be generated by the enterprise into perpetuity. The most common means of obtaining capitalization rates is through the market comparison method, whereby companies (“**Comparable Companies**”) having their stock traded in the public market are selected for comparison purposes and used as a basis for choosing reasonable capitalization rates for the subject company. Capitalization rates obtained in this manner are generally expressed as ratios of the various earnings figures, and are referred to as “market multiples.” Another common method of obtaining such multiples is to examine companies that have recently been sold in the public marketplace (“**Transaction Comparables**”). For this method, the total price paid for the company is related to earnings figures which yield implied transaction multiples. The acquired company is then compared with the subject company on the basis of risk and expected return, and the comparable transaction multiples are used as a basis for selecting appropriate multiples for the subject company.

Continued ...

Market multiples are categorized as either “leveraged” or “debt-free” depending on whether or not the earnings figures being capitalized are net of interest expense. The most common leveraged multiple is the price/earnings (“**P/E**”) ratio, which relates the price paid for the common stock of a company with that company’s earnings per share. The multiple is considered to be “leveraged” because earnings per share is net of any interest expense, and capitalization of this figure effectively incorporates the impact of any debt the company has into the final value for the equity. Another leveraged market multiple is the price/cash flow (“**P/CF**”) ratio, where cash flow equals net earnings plus depreciation expense. The P/CF multiple is used primarily in instances where the operating assets of the business, and the resulting depreciation expense, are large relative to total assets, total revenues and net earnings. This multiple tends to compensate for differences in the depreciation practices of companies, which could result in differing P/E multiples when the P/CF multiples are more comparable. A third form of leveraged market multiple, which is used in very specific instances, is the price/net book value (“**P/NBV**”) ratio. This form is typically employed for businesses which have substantial investments in tangible assets and for which operating earnings provide a reasonable return on investment. Examples of such businesses include banks, trust companies, and insurance companies, where a majority of the company’s assets are financial in nature.

Continued ...

Debt-free market multiples relate the value of the company's enterprise value ("**EV**" or "**Enterprise Value**"), or debt plus equity, to earnings figures from which no interest expense has been deducted. The more common debt-free multiples are enterprise value/earnings before interest, taxes, depreciation and amortization ("**EV/EBITDA**"), enterprise value/earnings before interest and taxes ("**EV/EBIT**"), enterprise value/debt-free cash flow ("**EV/DFCF**"), and enterprise value/debt-free earnings ("**EV/DFE**"). The use of these multiples may be appropriate when comparing companies that have substantially different amounts of financial leverage, because the multiples are based on total company value, which is generally independent of the amount of leverage in the company's capital structure. Their use effectively separates the issue of company valuation from the specific financing decisions that are made to operate the business. Furthermore, EV/EBITDA and EV/EBIT multiples, which are developed from pre-tax earnings figures, may be appropriate when comparing companies that have substantially different income tax situations, as well as different amounts of financial leverage. In general, these debt-free methods reduce distortions in P/CF and P/E that might be present due to differences in financial leverage or income taxes among firms. Another debt-free multiple is the enterprise value/revenue ("**EV/R**") ratio, which may be applicable in certain situations.

The market comparison method may also be useful in the valuation of individual assets. However, comparable transaction values of individual assets are seldom available because individual assets typically are transferred only as part of the sale of a business, not in piecemeal transactions. Furthermore, because individual assets are unique to a particular enterprise, comparison between enterprises is difficult. For these reasons, the market approach is seldom used and is rarely appropriate in the valuation of individual assets, unless exchanges of individual assets comparable to the subject asset can be observed.

Continued ...

DCF Approach

The DCF approach is another popular method of determining the fair market value of a company. The approach is one of estimating the present value of the projected future cash flows to be generated from the business and theoretically available (though not necessarily paid) to the capital providers of the company. In the DCF approach, the counterpart to the market multiple described above is the discount rate applied to the projected future cash flows to arrive at the present value. The discount rate is intended to reflect all risks of ownership and the associated risks of realizing the stream of projected future cash flows. It can also be interpreted as the rate of return that would be required by providers of capital to the company to compensate them for the time value of their money, as well as the risk inherent in the particular investment. However, unlike the market multiple approach, the discount rate employed in the DCF approach contains no implicit expectations of growth for the cash flows. Instead, the projected cash flows themselves reveal growth expectations, while allowing for a great deal more flexibility in projecting such growth rates.

In contrast to the “cash flow” or “earnings” figures used in the market capitalization approach, the figure used in the DCF approach more accurately represents the true cash flow being generated by the operations of the business. In short, it incorporates cash expenditures on working capital and fixed assets, while also recognizing the non-cash expenses contained in earnings figures. The cash flows are typically projected over a limited number of years, which will depend on the planning horizon of the specific firm or asset and other factors related to the particular industry and the general economy.

Continued ...

As a result, it is necessary to compute a terminal value as of the end of the last period for which cash flows are projected. This terminal value is essentially an estimate of the value of the enterprise as of that future point in time, and it incorporates the assumptions of perpetual operations and implicit growth found in the market capitalization approach. Discounting each of the projected future cash flows and the terminal value back to the present, and summing the results, yields an indication of value for the enterprise as a whole.

Continued ...

Treatment of Redundant Assets in the Market Capitalization and DCF Approaches

When used in combination, the various forms of the market capitalization approach and the DCF approach can lead to a reasonable indication of value for the subject company. However, these approaches do not generally capture the value of assets and liabilities that are not required for the operation of the business. Examples of such “non-operating” assets and liabilities include excess cash, investments not related to the company, unnecessary land and equipment, and contingent liabilities such as an under-funded pension plan. If such items exist, they must be valued separately and used to adjust the going-concern value indications determined by the market capitalization and DCF approaches.

Continued ...

Adjusted Book Value

The adjusted book value approach also provides meaningful indications of value for a company, although its applicability is generally limited to specific situations in which the market capitalization and DCF approaches are less suitable. The market capitalization and DCF approaches are appropriate in most going concern situations as the worth of a company is generally a function of its ability to earn future income or cash flow to provide an appropriate rate of return on investment. Asset values can sometimes constitute the prime determinant of corporate worth. This depends on the nature of the company's operations (such as an investment holding company), or if the outlook for a company's earnings is somewhat uncertain, or returns based on earnings are insufficient to justify the investment in assets.

The adjusted book value approach differs from the market capitalization and DCF approaches in two important ways. First, it focuses on individual asset and liability values from the company's balance sheet, which are adjusted to fair market value. In contrast, the market capitalization and DCF approaches focus on the aggregate returns generated by all the company's assets. Second, it can be applied in situations where liquidation is imminent. The market capitalization and DCF approaches have very limited applicability in a liquidation scenario.

The adjusted book value approach can also be used in going-concern situations to provide an additional indication of value. The approach may be appropriate in instances where the subject company has a heavy investment in tangible assets or where operating earnings are insignificant relative to the value of the underlying assets. On the other hand, it may not be the best approach in instances where the company has substantial operating earnings relative to the value of the underlying assets. In such cases, the residual equity value resulting from the adjusted book value approach may not reflect the value inherent in the company's superior cash-generating capability.

Section XV

Valuation of Thorneloe University

The Estimate Valuation is based upon assumptions and approaches that Farber considered appropriate in the exercise of its professional judgement for the purpose of arriving at an estimate of the range of fair market values of the University.

In Farber's analysis of Thorneloe, Farber has taken into consideration the income and cash-generating capability of the University. Typically, an investor contemplating an investment in a company with income and cash-generating capability will evaluate the risks and returns of the investment on a going-concern basis.

Earnings or cash flow based valuations are often used where it is assumed that the assets employed are providing, or are reasonably expected to provide, an appropriate rate of return on investment. Asset based approaches are typically favored in most other situations.

Thorneloe is a non-for-profit entity and has historically operated at close to break-even. Therefore, the discounted cash flow approach was not used as free cash flows are not available to Thorneloe upon which the discounted cash flow approach would be applied.

Given the lack of precedent transactions with publicly disclosed financial information available which may be considered comparable to Thorneloe, the market capitalization of precedent transactions approach was not used in our analysis.

Continued ...

FARBER

In order to determine the operating enterprise value of the University on or about the Valuation Date, Farber has relied upon the following valuation methodologies :

- i. Market capitalization – comparable companies; and
- ii. Adjusted book value approach.

Thereafter, Farber understands that there are cash and cash equivalents, and non-operating investment assets of the University which Farber determined to be redundant assets and forms value to the University in addition to the operating enterprise value.

The valuation results under the approaches employed are summarized in Appendix A.

Continued ...

FARBER

General

Given the universe of North American private universities that are publicly traded, Farber used the market capitalization approach to estimate the valuation of Thorneloe. We also took note of certain publicly traded international universities and transactions in the sector for which financial information was available and relevant. The section below outlines the procedures Farber performed to identify comparable public companies or comparable market transactions.

Revenue and EBITDA

Farber has reviewed Thorneloe's internally prepared financial statements for FY2021 and estimated normalized income statement for operations going forward. Based on the foregoing, Farber has reviewed the revenue and expense items that form Thorneloe's reported operating results summarized in Appendix D and Appendix E.

Given that Thorneloe is winding down its operations and does not expect to generate the same level of revenue in the future (i.e. certain grants will no longer be available), it is Farber's view that Thorneloe's historical revenue is not an inaccurate representation of the University's maintainable revenue for the purpose of the Estimate Valuation on or about the Valuation Date. Additionally, given that Thorneloe is a not-for-profit enterprise, it is Farber's view that Thorneloe's historical EBITDA is not an accurate measure of value for the purpose of the Estimate Valuation.

Continued ...

Based on the foregoing, it is Farber's view that Thorneloe's estimated normalized revenue of approximately \$2.2 million (based on discussions with Management) is not an unreasonable measure of Thorneloe's value upon which the market capitalization approach may be applied on or about the Valuation Date.

Market Multiples

The selection of an appropriate capitalization rate or earnings multiple to apply to the selected level of earnings is, of necessity, a matter of informed judgment and is dependent upon a number of factors, including:

- i. the length of time Thorneloe has been in existence;
- ii. the size and profitability of Thorneloe's operations;
- iii. the location of Thorneloe's campus;
- iv. the campus size and courses offered at Thorneloe;
- v. Thorneloe's historical revenue and profitability trends for the period under review;
- vi. the level of maintainable normalized revenue selected;
- vii. the outlook for the Canadian Colleges & Universities industry on or about the Valuation Date; and
- viii. the competitive landscape of the Canadian Colleges & Universities industry on or about the Valuation Date.

Continued ...

Farber has also considered market multiples for publicly traded companies, as of the Valuation Date, which Farber deems to be comparable (Appendix B).

Selection of Comparable Public Companies

When performing a comparable company analysis under the Market Capitalization Approach, it is important to examine a representative list of publicly owned companies that are similar to Thorneloe. In some cases, companies may be quite similar from an investment standpoint, even though they appear to be engaged in somewhat different lines of business or industries. Primarily, they should offer operational and economic comparability in the area of major importance to potential investors.

Farber's search for such comparable companies included review of the Capital IQ database, which contains pertinent financial and operating information on actively traded public companies. In establishing the search parameters, four basic criteria had to be met initially:

- i. the company had to primarily be engaged in operating as a private education institution;
- ii. the company's common stock had to be publicly traded;
- iii. the company's trading multiples had to be publicly disclosed; and
- iv. the trading market of the company had to be relatively active to obtain true investor sentiment.

Continued ...

After reviewing numerous companies fitting the general criteria described above, Farber selected twenty-six companies for comparative purposes. Of these comparable companies, four are publicly traded private universities listed in the U.S. and six are publicly traded private universities listed internationally. Farber believes that the selected companies are comparable to Thorneloe seeing as the comparables are academic institutions which generate earnings through tuition fees and other certain revenue sources similar to Thorneloe. Notwithstanding that certain of the comparable companies may be larger in size, liquidity, historical growth and certain other characteristics further set out herein, the similar nature of the comparable companies' operations provides a reasonable comparative measure of value of universities such as Thorneloe upon which the Market Capitalization approach may be applied. A description of each of the Comparable Companies is provided in Appendix I.

Comparative Analysis

Before drawing any conclusions from the market multiples of the Comparable Companies, it is necessary to complete a comparative analysis in which an assessment is made of Thorneloe's risk and return characteristics relative to the Comparable Companies. The analysis focuses on both quantitative considerations (which include financial performance and other quantifiable data) and qualitative considerations (which include any factors that are expected to impact future financial performance and investors' interpretations of financial results).

Continued ...

We note that in comparing the last twelve months (“**LTM**”) figures of the Comparable Companies to Thorneloe's performance, we used Thorneloe's normalized financials as per Appendix D. For the purpose of analysis of Thorneloe's risk and return characteristics relative to the Comparable Companies, Farber has performed its analyses on the U.S. listed publicly traded private universities and internationally listed publicly traded private universities.

Farber's review of Thorneloe's qualitative and quantitative factors relative to Comparable Companies indicated the following (Appendix H):

- i. Size*
 - a. Thorneloe is the smallest of the Comparables as measured by Enterprise Value, LTM revenue and LTM EBITDA
- ii. Liquidity*
 - a. Thorneloe has the fourth lowest liquidity among the Comparables as measured by the current ratio
- iii. Historical Growth*
 - a. Thorneloe has exhibited the lowest LTM revenue growth among the Comparable Companies
- iv. Leverage*
 - a. Thorneloe has the lowest leverage among the Comparables as measured by total debt/equity %
- v. Profitability*
 - a. Thorneloe has exhibited the lowest LTM EBITDA margin among the Comparable Companies

Continued ...

Determination of Market Multiples

Debt-free market multiples for the Comparable Companies were derived by dividing the value of each company's Enterprise Value by LTM Revenue.

The derived market multiples vary reflecting differing investor sentiment towards each of the Comparable Companies, as well as the specific industry and general economic factors. The resulting multiples for the selected Comparable Companies (U.S. listed private universities and internationally listed private universities) were as follows (Appendix B):

	EV / LTM Revenue Multiples		
	U.S. Listed Private Universities	Internationally Listed Private Universities	U.S. and Internationally Listed Private Universities
Minimum	.46x	2.81x	.46x
Maximum	3.28X	7.94X	7.94X
Median	1.15x	4.21x	3.52x
Mean	1.51x	4.82x	3.50x

Source: Capital IQ

Continued ...

Farber's view is that a prospective purchaser of Thorneloe would select a LTM Revenue multiple that is between the minimum and the median of the Comparable Companies due to the following factors, among others:

- i. Special consideration has been given to the multiples of U.S. listed private universities;
- ii. Thorneloe is the smallest in terms of revenue, EBITDA, and enterprise value among the Comparable Companies;
- iii. Thorneloe has the lowest LTM revenue growth among the Comparable Companies;
- iv. Thorneloe has fourth lowest liquidity as measured by the current ratio among the Comparable Companies; and
- v. Thorneloe has the lowest leverage as measured by total debt to equity ratio among the Comparable Companies.
- vi. Thorneloe's operations are dependent on the continued partnership between Laurentian and Thorneloe.

Continued ...

Based on the factors above, Farber's selected range of market multiples are as follows:

	EV/LTM Revenue
Low	1.25x
High	1.75x

Publicly Traded Comparable Companies Summary

The value indicators that have been computed using the Market Capitalization of Publicly Traded University Approach reflect Enterprise Value of Thorneloe. As set out in Appendix B, applying the appropriate EV/LTM Revenue multiples to the LTM Revenue yields an Operating Enterprise Value range for the University in the range of approximately \$2.8 million to \$3.9 million.

Given that Thorneloe is winding down its operations and may enter into a formal insolvency process, Farber believes that the book value of equity is not an unreasonable measure of the University's value as of the Valuation Date.

As set out in Appendix C, the book value of operating assets as of April 31, 2021 was approximately \$4.3 million and the book value of operating liabilities as of April 31, 2021 was approximately \$1.5 million.

To arrive at the book value of equity of Thorneloe, we subtracted the book value of operating liabilities of approximately \$1.5 million from the book value of operating assets of approximately \$4.3 million. As a result, Farber calculated the estimated fair market value of Thorneloe's on-going business operations to be approximately \$2.8 million (Appendix C).

Section XVI

Analysis of Approaches

As set out in Appendix A, there is a reasonable range of operating enterprise values implied by the valuation approaches employed ranging from a value of approximately \$2.7 million to approximately \$3.9 million, excluding the value of non-operating assets.

Furthermore, the implied operating enterprise value range determined using the market capitalization approach is corroborated by the implied operating enterprise value range of the University's ongoing business operations determined using the adjusted book value approach and thus Farber believes that neither approaches are unreasonable value measures of the University's operations on or about the Valuation Date.

Based on Farber's understanding, Thorenloe, at the Valuation Date, has a total of approximately \$8.6 million total investment reported on the financial statements (Appendix G), of which approximately \$6.7 million is non-restricted, and can be used by Thorneloe for any purposes. The remaining \$1.9 million are restricted and can only be used for certain specific purposes. For the purpose of this Valuation, the non-restricted portion of the investments (\$6.7 million) are effectively treated as cash and cash equivalents, and are considered to be redundant assets/non-operating assets.

To the selected operating enterprise value range of approximately \$2.8 million to \$3.3 million, we added the total non-operating assets of approximately \$6.7 million to arrive at the implied enterprise value. (Appendix A)

The resulting implied Enterprise Value range is between \$9.5 million and \$10 million. If Farber were asked to select a particular amount, it would select the mid-point of approximately \$9.8 million.

Section XVII

Summary and Conclusion

As set out in Appendix A, based on information and data relied upon, and subject to the restrictions and qualifications and assumptions and major considerations noted herein, Farber has concluded that the estimated enterprise value of Thorneloe on or about the Valuation Date to be in the approximate range of \$9.5 million to \$10 million. If Farber were asked to select a particular value, it would select the midpoint of \$9.8 million.

Farber trusts that the Report meets your present requirements. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

FARBER CORPORATE FINANCE INC.

Appendices

	Low	High
Implied Enterprise Value		
Adjusted Book Value	\$2,700,000	\$2,700,000
Publicly Traded Comparable Companies Analysis	\$2,750,000	\$3,850,000
<i>Average</i>	<i>\$2,725,000</i>	<i>\$3,275,000</i>
Selected Operating Enterprise Value	\$2,800,000	\$3,300,000
 Add: Non-Operating Assets		
Investments in Non-Restricted Funds (Rounded)	\$6,700,000	\$6,700,000
Implied Enterprise Value Range	\$9,500,000	\$10,000,000

Appendix B – Market Capitalization Comparable Companies Analysis

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in millions \$CAD

Company Name	Market Cap	Total EV	LTM Sales	LTM EBITDA	Total EV / LTM Sales	Total EV / LTM EBITDA
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Private University - U.S. Listed

Laureate Education, Inc.	\$3,999	\$4,271	\$1,302	\$308	3.28x	13.86x
Strategic Education, Inc.	2,324	2,356	1,358	275	1.74x	8.57x
American Public Education, Inc.	619	232	411	49	.56x	4.73x
Perdoceo Education Corporation	936	397	867	199	.46x	2.00x
<i>Private University - U.S. Listed</i>					Median	1.15x
					Mean	1.51x

Private University - Internationally Listed

iPeople, inc.	\$191	\$219	\$78	\$25	2.81x	8.74x
Humansoft Holding Company K.S.C.P.	1,716	1,519	404	290	3.76x	5.24x
China Xinhua Education Group Limited	436	450	101	82	4.47x	5.45x
Arab International Co. For Education & Investment P.L.C.	188	231	39	16	5.99x	14.56x
Shanghai Gench Education Group Limited	345	472	120	63	3.94x	7.43x
Chen Lin Education Group Holdings Limited	390	560	70	30	7.94x	18.45x
<i>Private University - Internationally Listed</i>					Median	4.21x
					Mean	4.82x
<i>Private University - U.S. Listed and Internationally Listed</i>					Minimum	.46x
					Maximum	7.94x
					Median	3.52x
					Mean	3.50x

EV Range

Normalized Revenue	\$2,200,000	\$2,200,000
Selected Multiple	1.25x	1.75x
Selected EV Range	\$2,750,000	\$3,850,000

Source: Capital IQ

Appendix C – Adjusted Book Value of Ongoing Business Operations

Operating Book Value of Equity

	<u>Value</u>
Book Value of Operating Assets as of April 30, 2021	
Cash and Cash Equivalents	\$ 1,014,954
Accounts Receivables	\$ 142,835
Other Current Assets	\$ 13,352
Fixed Assets	<u>\$ 2,623,119</u>
	\$ 3,794,260
 Book Value of Operating Liabilities as of April 30, 2021	
Accounts Payables	\$ 691,148
Credit Cards	\$ 116
Other Current Liabilities	<u>\$ 392,452</u>
	\$ 1,083,716
 Book Value of Equity - Operating	 \$ 2,710,544

Source: Management's internally prepared balance sheet as of April 30, 2021

May 2020 through April 2021

	<u>Estimated P&L Going Forward [1]</u>	<u>Adjustments</u>	<u>Normalized</u>	<u>Notes</u>
Income				
Government grants	491,219	-	491,219	
Tuition Fees			-	
Spring Tuition	265,579	-	265,579	
Fall/Winter Tuition	1,288,711	-	1,288,711	
Theology	21,947	(21,947)	-	[2]
Material Fees	91,148	-	91,148	
Total Tuition Fees	1,667,385	(21,947)	1,645,439	
Other Fees	90	-	90	
Donations & Non-Government Grants	57,992	-	57,992	
Sales of Services and Products	119	-	119	
Investment Income	1,860	-	1,860	
Other Revenue	635	-	635	
Total Income	2,219,300	(21,947)	2,197,354	

Source: Management's internally prepared financials, Discussions with Management

1. Based on Management's internally prepared profit and loss for the fiscal year ended April 30, 2021

2. Theology tuition is excluded as this department operates independently from Laurentian

	FYE <u>30-Apr-19</u>	FYE <u>30-Apr-20</u>
Revenue		
Government grants	811,416	568,771
Fees - general	1,838,838	1,710,095
Fees - School of Theology	31,368	22,577
Residence	401,203	362,266
Donations	64,984	67,783
Investment	232,036	205,254
Miscellaneous	35,471	18,947
Total Revenue	3,415,316	2,955,693
Expenses		
Salaries and benefits	2,468,225	2,439,079
Operating costs	367,742	280,766
Provision for sabbatical leave	80,050	176,641
Laurentian University Service Charge	165,898	358,086
Faculty professional allowances	65,274	40,605
Office supplies and maintenance	23,919	7,586
Professional services	20,313	28,484
Travel	16,811	25,030
Bursaries and scholarships	39,615	40,078
Amortization of capital assets	129,552	133,452
Total Expenses	3,377,399	3,529,807
Unrealized gain (loss) on investments	359134	-337598
Excess (defecency) of revenue over expenses	<u>397,051</u>	<u>(911,712)</u>

	As of <u>30-Apr-19</u>	As of <u>30-Apr-20</u>	As of <u>30-Apr-21</u>
ASSETS			
Current Assets			
Cash and Cash Equivalents	\$689,807	\$942,624	\$1,014,954
Accounts Receivables	510,097	445,116	142,835
Other Current Assets	16,762	113,535	13,352
Total Current Assets	1,216,666	1,501,275	1,171,141
Non-Current Assets			
Fixed Assets	2,737,850	2,752,506	2,623,119
Investments	9,520,250	8,469,828	8,759,193
Investments - Land Held for Resale	45,000	45,000	45,000
Post-Employment Benefits Asset		\$-	130,636
Total Non-Current Assets	12,303,100	11,267,334	11,557,948
TOTAL ASSETS	\$13,519,766	\$12,768,610	\$12,729,089
LIABILITIES AND SHAREHOLDER'S EQUITY			
Current Liabilities			
Accounts Payables	\$435,777	\$65,002	\$691,148
Credit Cards	-	3,004	116
Other Current Liabilities	453,212	970,370	392,452
Total Current Liabilities	888,989	1,038,376	1,083,716
Non-Current Liabilities			
Post-Employment Benefits Liability	701,236	128,073	\$-
Accrued Pension Liability	-	792,219	-
Total Non-Current Liabilities	701,236	920,292	\$-
Total Shareholder's Equity	-	10,810,942	11,645,373
TOTAL LIABILITIES AND SHAREHOLDER'S EQUITY	\$1,590,225	\$12,769,610	\$12,729,089

	Total Restricted Funds	Non-Restricted Funds	Total funds
Total All Funds	1,943,230	6,671,894	8,615,124

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Source: Management's internally prepared financials

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As at April 30, 2021

	Restricted Funds	Non-Restricted Funds	Total funds
Library Fund	102,004	-	102,004
Theatre Fund	-	63,686	63,686
Women's Studies Fund	-	2,863	2,863
Distance Education Fund	-	2,234	2,234
Thorneloe School of Theology	-	16,757	16,757
Chapel Fund	-	12,883	12,883
Discretionary Strategic Reserve	-	2,887,747	2,887,747
Plant Fund	-	653,543	653,543
Celebration Walk Tree Fund	1,979	-	1,979
Bursary Fund	61,451	-	61,451
E.D. Ted Evans Fund	21,165	-	21,165
Marion Charlotte Higgins Fund	37,985	-	37,985
Alice Claridge Estate	5,300	-	5,300
Alumni Scholarship Fund	11,473	-	11,473
Peterson Ministry Fund	50,838	-	50,838
IODE Bursary Fund	3,416	-	3,416
Brian Clark Bursary Fund	2,408	-	2,408
Arthur J Grout Estate	19,173	-	19,173
Carolyn Fouriezios Bursary	14,562	-	14,562
Don Brown Bursary Fund	20,801	-	20,801
Stanley G. Mullins Bursary Fund	6,413	-	6,413
F. Culliford Bursary Fund	9,421	-	9,421
Tooke Scholarship	8,685	-	8,685
Resurrection Theology Bursary	22,878	-	22,878
Resurrection Legacy Bursary	13,182	-	13,182
Betty Freelandt Bursary Fund	1,853	-	1,853

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Continued ...

Source: Management's internally prepared financials

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	Restricted Funds	Non-Restricted Funds	Total funds
St. Lazarus Ecumenical Bursary	12,400	-	12,400
Sueanne Checkeris Scholarship	1,144	-	1,144
St. Chad-Moosonee Bursary	11,431	-	11,431
Ulrich Sikora Memorial Bursary	800	-	800
Hillary Afelskie Memorial Burs.	2,415	-	2,415
Tombalakian Bursary	12,393	-	12,393
Ronald L Trolve Bursary	2,684	-	2,684
Academic Trust Fund	-	3,011,155	3,011,155
Clair Jory Wood Scholarship	6,855	-	6,855
E Checkeris Bursary Fund	12,994	-	12,994
MacLennan Medal	413	-	413
Chapel Organ Fund	-	21,026	21,026
Loukidelis Adjunct Fund	22,628	-	22,628
Loukidelis Classics Endowment	180,960	-	180,960
Murray Estate Bursary Fund	228,255	-	228,255
Dr. S. Katary Lecture	2,535	-	2,535
OSOTF Student Opportunity Fund	15,294	-	15,294
OSOTF II Opportunity Fund	8,915	-	8,915
OTSS Fund	80,700	-	80,700
Student Awards	133,995	-	133,995
Dr. S. Katary Memorial Lecture	106,060	-	106,060
OSOTF Student Opportunity Fund	38,890	-	38,890
OSOTF II Endowment Fund	22,463	-	22,463
OTSS Endowment Fund	175,760	-	175,760
Loukidelis Classics Endowment	82,925	-	82,925
Murray Estate Bursary Fund	110,705	-	110,705
Resurrection Theology Bursary	44,000	-	44,000
Resurrection Legacy Bursary	17,000	-	17,000
McLaughlin Endowment	195,229	-	195,229
Thorneloe University Funds	1,943,230	6,671,894	8,615,124

Note: The figures listed above are Management's internal calculations of the total restricted and non-restricted funds of the University and may have nominal discrepancies from the totals listed on the University's balance sheet.

Source: Management's internally prepared financials

U.S. Listed Universities

Internationally Listed Universities

Thorneloe

Size		
Enterprise value (\$M CAD)		
Laureate Education, Inc.	4,271.1	
Strategic Education, Inc.	2,356.2	
Humansoft Holding Company K.S.C.P.	1,518.7	
Perdoceo Education Corporation	397.4	
Chen Lin Education Group Holdings Limited	559.6	
Shanghai Gench Education Group Limited	471.7	
China Xinhua Education Group Limited	449.6	
American Public Education, Inc.	232.0	
iPeople, inc.	218.8	
Arab International Co. For Education & Investment P.L.C.	230.6	
Thorneloe University	9.8	

Liquidity		
Current Ratio		
American Public Education, Inc.	6.5	
Humansoft Holding Company K.S.C.P.	5.9	
Perdoceo Education Corporation	4.7	
China Xinhua Education Group Limited	5.9	
Strategic Education, Inc.	1.6	
Laureate Education, Inc.	1.5	
iPeople, inc.	1.4	
Thorneloe University	1.1	
Chen Lin Education Group Holdings Limited	1.1	
Shanghai Gench Education Group Limited	1.2	
Arab International Co. For Education & Investment P.L.C.	0.4	

Leverage		
Total Debt / Equity %		
Shanghai Gench Education Group Limited	65%	
Chen Lin Education Group Holdings Limited	35%	
iPeople, inc.	29%	
Laureate Education, Inc.	22%	
Strategic Education, Inc.	17%	
China Xinhua Education Group Limited	14%	
Perdoceo Education Corporation	6%	
Arab International Co. For Education & Investment P.L.C.	6%	
American Public Education, Inc.	2%	
Humansoft Holding Company K.S.C.P.	2%	
Thorneloe University	0%	

Size		
LTM Revenue		
Strategic Education, Inc.	1,357.9	
Laureate Education, Inc.	1,302.1	
Perdoceo Education Corporation	866.6	
American Public Education, Inc.	410.8	
Humansoft Holding Company K.S.C.P.	403.5	
Shanghai Gench Education Group Limited	119.6	
China Xinhua Education Group Limited	100.5	
iPeople, inc.	77.9	
Chen Lin Education Group Holdings Limited	70.5	
Arab International Co. For Education & Investment P.L.C.	38.5	
Thorneloe University	2.2	

Growth		
LTM Revenue Growth		
Humansoft Holding Company K.S.C.P.	60%	
Chen Lin Education Group Holdings Limited	40%	
American Public Education, Inc.	11%	
Shanghai Gench Education Group Limited	18%	
China Xinhua Education Group Limited	15%	
Strategic Education, Inc.	7%	
Perdoceo Education Corporation	6%	
Arab International Co. For Education & Investment P.L.C.	-1%	
Laureate Education, Inc.	-7%	
iPeople, inc.	-11%	
Thorneloe University	-22%	

Profitability		
LTM EBITDA Margin		
China Xinhua Education Group Limited	82%	
Humansoft Holding Company K.S.C.P.	72%	
Shanghai Gench Education Group Limited	53%	
Chen Lin Education Group Holdings Limited	43%	
Arab International Co. For Education & Investment P.L.C.	41%	
iPeople, inc.	32%	
Laureate Education, Inc.	24%	
Perdoceo Education Corporation	23%	
Strategic Education, Inc.	20%	
American Public Education, Inc.	12%	
Thorneloe University	-29%	

Size		
LTM EBITDA		
Laureate Education, Inc.	308.2	
Humansoft Holding Company K.S.C.P.	289.9	
Strategic Education, Inc.	274.9	
Perdoceo Education Corporation	199.2	
China Xinhua Education Group Limited	82.4	
Shanghai Gench Education Group Limited	63.5	
American Public Education, Inc.	49.0	
Chen Lin Education Group Holdings Limited	30.3	
iPeople, inc.	25.0	
Arab International Co. For Education & Investment P.L.C.	15.8	
Thorneloe University	- 0.6	

Growth		
LTM EBITDA Growth		
Humansoft Holding Company K.S.C.P.	127%	
Laureate Education, Inc.	91%	
China Xinhua Education Group Limited	38%	
Shanghai Gench Education Group Limited	20%	
American Public Education, Inc.	10%	
Perdoceo Education Corporation	7%	
Arab International Co. For Education & Investment P.L.C.	-3%	
iPeople, inc.	-4%	
Chen Lin Education Group Holdings Limited	3%	
Strategic Education, Inc.	-15%	
Thorneloe University	NMF	

Source: Capital IQ

Laureate Education, Inc., together with its subsidiaries, provides higher education programs and services to students through a network of universities and higher education institutions. It offers a range of undergraduate and graduate degree programs primarily in the areas of business and management, medicine and health sciences, and engineering and information technology through campus-based, online, and hybrid programs. The company provides its services in Brazil, Mexico, Chile, Peru, and the United States.

Strategic Education, Inc., through its subsidiaries, provides post-secondary education and non-degree programs. It operates in three segments: Strayer University, Capella University, and Australia/New Zealand. The company operates Strayer University that provides undergraduate and graduate degree programs in business administration, accounting, information technology, education, health services administration, public administration, and criminal justice for working adult students through its 64 physical campuses located in the eastern United States, as well as through online; and an executive MBA online through its Jack Welch Management Institute.

American Public Education, Inc., together with its subsidiaries, provides online and campus-based postsecondary education. The company operates in two segments, American Public Education and Hondros College of Nursing. It offers 129 degree programs and 112 certificate programs in various fields of study, including business administration, health science, technology, criminal justice, education, and liberal arts, as well as national security, military studies, intelligence, and homeland security.

Source: Capital IQ

Perdoceo Education Corporation provides postsecondary education to student through online, campus based, and blended learning programs in the United States. It operates through two segments, Colorado Technical University and American InterContinental University. The company offers academic programs in the career-oriented disciplines of business and management, nursing, healthcare management, computer science, engineering, information systems and technology, project management, cybersecurity, criminal justice, education, and health sciences.

iPeople, inc., together with its subsidiaries, engages in the education business in the Philippines. The company operates Mapúa University, an engineering and technological university; Malayan Colleges Laguna that offers programs in engineering, computer science, information technology, business, accountancy, and hotel and restaurant management located in Cabuyao, Laguna; Malayan Colleges Mindanao, a school situated in Davao and Mindanao; and Malayan High School of Science, a high school that provides secondary education in the area of science, technology, and mathematics located in Manila.

Humansoft Holding University K.S.C.P., together with its subsidiaries, establishes and operates universities and colleges, and private training institutes in Kuwait and internationally. The company operates through Training and Career Development Programs, English Training, Learning Solutions, and Higher Education segments. It provides computer education and executive training courses; and computer programming, advertisement, publication and distribution, technology, e-commerce, media, and administrative business training services.

Source: Capital IQ

China Xinhua Education Group Limited provides higher education services in the People's Republic of China. As of December 31, 2020, it invested in and operated four educational institutions, which include Xinhua University, an university-level education institution that offers undergraduate, junior college, and continuing education focusing on applied sciences; Xinhua School, a private secondary vocational school, which provides general, undergraduate oriented, and five-year junior college oriented secondary vocational education programs, as well as vocational education programs; School of Clinical Medicine, an independent college to train full-time undergraduate students; and Hongshan College, an independent college to train full-time undergraduate students.

Arab International Co. For Education & Investment P.L.C. engages in the establishment of private universities in Jordan. It is involved in the preparation of students as specialists in the technological fields mainly inlaid with human and social studies. The company operates its educational activities through the Applied Science University.

Shanghai Gench Education Group Limited, an investment holding company, provides higher education services in the People's Republic of China. The company primarily operates a private university in Shanghai. It provides education services to its students with a focus on applied sciences. The company also provides common undergraduate education services.

Source: Capital IQ

Chen Lin Education Group Holdings Limited provides private tertiary education services in the People's Republic of China. It operates Jiangxi University of Applied Science, a private university; and Jiangxi Wenli Jishi College, a full-time vocational college that provide undergraduate, junior college, and vocational programs, as well as various education related services.

Source: Capital IQ

Glenn M. Bowman, *Senior Managing Director*

Mr. Bowman is a Senior Managing Director with Farber. He oversees valuations, investment banking, financial advisory and financial restructuring engagements and has been involved in over 2,000 assignments. Mr. Bowman was formerly a Managing Director at CCC Investment Banking, the Managing Partner at Capital Canada Limited and the President and Director of Houlihan Lokey Howard & Zukin Canada, the Toronto office of Houlihan Lokey.

Educational & Professional Affiliations

Bachelor of Arts, 1979, *University of Toronto*

Chartered Accountant, 1982, *Member of the Institute of Chartered Accountants of Ontario*

Chartered Business Valuator, 1987, *Member of the Canadian Institute of Chartered Business Valuators*

Member, 1989, *American Society of Appraisers*

Member, 1992, *Arbitration and Mediation Institute of Ontario Inc.*

Fellow Chartered Accountant, 2006, *Fellows of the Institute of Chartered Accountants of Ontario*

Corporate Finance Qualification, 2006, *The Canadian Institute of Chartered Accountants*

Chartered Professional Accountant, 2012, *Member of the Chartered Professional Accountants of Ontario*

Fellow Chartered Professional Accountant, 2012, *Fellows of the Chartered Professional Accountant of Ontario*

Continued ...

Other Professional Involvement

Speaker on acquisition and divestiture, corporate finance, valuation and litigation support matters to a variety of groups such as the Arbitration and Mediation Institute of Ontario, banks, Canadian Bar Association, Ontario – Continuing Legal Education Program, Canadian Institute of Chartered Business Valuators, Executive Forum of Wilfrid Laurier University and the University of Western Ontario, Federated Press, Federation of Law Societies, Infonex, Insight Information Inc., Insurance Companies, Louis Paul Nolet & Associates and Ontario Expropriation Association.

Interviewed by The Wall Street Journal; Report on Business, Globe & Mail; Financial Post; CBC Newsworld, Business News and Business World; and CBC Daybreak discussing mergers and acquisitions in Canada and the United States.

Author of various articles on acquisition and divestiture, business valuation and litigation support matters.

Lecturer: MBA programs at University of Toronto and York University; The Law Society of Upper Canada (Bar Admission) Accounting Course; The Chartered Accountants Students Association of Ontario (CASAO); and the Ontario School of Accountancy (1978 – 1990).

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TAB 4

NOTICE OF REVISION OR DISALLOWANCE

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 ("LU" or the "Applicant")**

NOTICE OF REVISION OR DISALLOWANCE

To: Thorneloe University c/o Koskie Minsky LLP

Terms not otherwise defined in this Notice have the meaning ascribed thereto in the Amended and Restated Claims Process Order. The Amended and Restated Claims Process Order can be accessed on the Monitor's website at www.ey.com/ca/Laurentian.

This Notice of Revision or Disallowance is issued pursuant to the Amended and Restated Claims Process Order. The Monitor hereby gives you notice that it has reviewed your Proof of Claim and has revised or disallowed your Claim as set out below:

Claim Type	Amount of Claim per Proof of Claim	Disallowed Amount	Total Secured Claim Allowed	Total Unsecured Claim Allowed
Severance Payments to Thorneloe faculty and employees <i>(Unsecured)</i>	\$1,481,673.00 CAD	\$0.00 CAD	\$0.00 CAD	\$1,481,673.00 CAD
Additional Payments to the	\$600,000.00 CAD (this is a placeholder claim; which is done without admission of	\$600,000.00 CAD	\$0.00 CAD	\$0.00

Laurentian Pension Plan <i>(Unsecured)</i>		liability and will change depending on the outcome of discussions with Laurentian's pension counsel)			
Receivables owing by Laurentian to Thorneloe <i>(Trust)</i>		\$524,783.00 CAD	\$242,358.95	\$0.00 CAD	\$341,187.93 CAD
Retiree Health Benefits Plan "surplus" amount <i>(Trust)</i>		\$23,000.00 CAD (subject to verification of that amount and any changes that may be warranted)	\$23,000.00 CAD	\$0.00 CAD	\$0.00 CAD
Separation costs <i>(Unsecured)</i>		\$100,000.00 CAD (estimated)	\$0.00 CAD	\$0.00 CAD	\$100,000.00 CAD
Legal and Advisor Costs <i>(Unsecured)</i>		\$1,850,000.00 CAD (approximately \$1,500,000 has been incurred to date and the balance is estimated)	\$1,850,000.00 CAD	\$0.00 CAD	\$0.00 CAD
Insolvency Filing Costs <i>(Unsecured)</i>		\$500,000.00 CAD (estimated)	\$500,000.00 CAD	\$0.00 CAD	\$0.00 CAD
Loss to Thorneloe's academic and commercial value <i>(Unsecured)</i>		\$9,800,000.00 CAD	\$9,800,000.00 CAD	\$0.00 CAD	\$0.00 CAD
Total (Unsecured):		\$14,879,456.00 CAD	\$12,956,595.07 CAD	\$0.00 CAD	\$1,922,860.93 CAD

Reasons for Revision: See memorandum attached as Schedule "A".

If you intend to dispute this Notice of Revision or Disallowance, you must notify the Monitor of such intent by delivery to the Monitor of a Dispute Notice in accordance with the Amended and

Restated Claims Process Order, such that it is received by the Monitor by 5:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

Ernst & Young Inc.
Court-appointed Monitor of Laurentian University of Sudbury
Ernst & Young Tower
100 Adelaide Street West, P.O. Box 1
Toronto, Ontario M5H 0B3

Hotline: 1-888-338-1766 / 1-416-943-3057
Email: LaurentianUniversity.monitor@ca.ey.com

If you do not deliver a Dispute Notice in accordance with the Amended and Restated Claims Process Order, the value of your Called Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

DATED at Toronto this 25th day of May, 2022.

SCHEDULE “A”

Reasons for Revision of Claim of Thorneloe University (“Thorneloe”)¹

For the reasons detailed below, the Monitor has determined that Thorneloe’s general unsecured claim is allowed in part and in the amount of \$1,922,860.93; Thorneloe’s trust claim is disallowed in full.²

Laurentian, in consultation with the Monitor, has decided not to have D&O Claims determined within the Claims Process. As a result, the Monitor takes no position in this Notice of Revision with respect to Thorneloe’s D&O Claim.

I. Claim Summary

In its revised Proof of Claim, Thorneloe makes a claim in the total amount of \$14,879,456.00, \$547,783.00 of which is filed as a trust claim with the remaining \$14,331,673.00 filed as a general unsecured claim.

Thorneloe’s \$14,879,456.00 claim is made up of the following eight components:

- i) Severance payments to Thorneloe faculty and employees, in the amount of \$1,481,673;
- ii) Additional payments to the Laurentian pension plan, in the amount of \$600,000;
- iii) Receivables owing by Laurentian to Thorneloe, in the amount of \$524,783;
- iv) Retiree Health Benefits Plan “surplus” amount, in the amount of \$23,000;
- v) Separation costs, in the amount of \$100,000;
- vi) Legal and advisor costs, in the amount of \$1,850,000;
- vii) Insolvency filing costs, in the amount of \$500,000; and
- viii) Loss to Thorneloe’s academic and commercial value, in the amount of \$9,800,000.

Components (iii) and (iv) above are filed as a trust claim. All other components are filed as a general unsecured claim.

II. Reasons for Revising Thorneloe’s Receivables Claim

The Monitor has determined to allow in part and in the amount of \$341,187.93 Thorneloe’s claim in respect of unpaid grants and tuition. This claim is being allowed as a general unsecured claim and Thorneloe’s trust claim to these funds is denied.

The Monitor, in consultation with Laurentian, has reviewed Laurentian’s records and has determined that Laurentian owes Thorneloe \$341,187.93 (not \$143,003) in respect of the pre-filing period and owed \$337,843.91 in respect of the post-filing period pursuant to the Financial Distribution Notice. The post-filing amount totalling \$337,843.91 (not \$381,780) was paid to Thorneloe through multiple progress payments in March and April 2021. Accordingly, the pre-

¹ Capitalized terms used within this section but not otherwise have the meanings attributed to such terms in Thorneloe’s Proof of Claim dated July 30, 2021.

² For a breakdown of the portions of Thorneloe’s claim that are allowed and disallowed, refer to Appendix “A.1”.

filing claim in the amount of \$341,187.93 is allowed as a general unsecured claim and the post-filing portion of the claim is disallowed in whole.

Thorneloe's trust claim is denied on the basis that Thorneloe has failed to satisfy the requisite certainty of intention to create a trust. Certainty of intention asks whether the settlor intended to create a trust. There is no evidence that the students, being the ones who transferred property to Laurentian, intended to create a trust. There is no evidence that the students were aware of the Federation Agreement or the Financial Distribution Notice or how Laurentian intended to use the funds it received. The term "trust" was not used in Laurentian's marketing materials to students, the Financial Distribution Notice or the Federation Agreement. Neither the Federation Agreement nor the Financial Distribution Notice required Laurentian to keep the tuition funds segregated from the rest of Laurentian's funds, which is a particularly weighted factor to consider in these circumstances where it is alleged that Laurentian is collecting money in trust for Thorneloe.³

In *New Solutions*, a case involving a similar situation where tuition funds were paid to a school that later entered insolvency proceedings, the Court noted that counsel were unable to find any cases in which an advance or down payment made on account of future services was presumed to be held in trust simply because the payment was made on account of services to be rendered in the future.⁴

III. Reasons for Disallowing Thorneloe's Claim to its RHBP Surplus Contributions

Thorneloe asserts a trust claim in the amount of \$23,000 for the return of funds that it alleges were held in trust for Thorneloe in connection with the RHBP. The Monitor has determined to disallow this claim in full.

The determination of Thorneloe's Third Party RHBP Claim is set out at paragraph 44 of the Compensation Claims Methodology. The Statement of Compensation Claim issued by the Monitor calculated Thorneloe's Third Party RHBP Claim in accordance with paragraph 44 of the Compensation Claims Methodology as the greater of:

- a) Third Party RHBP Contributions up to February 1, 2021: \$62,894.58 less Third Party Claims paid up to February 1, 2021: \$40,895.83 = \$21,998.75; or
- b) Aggregate RHBP Claims in respect of Retirees, Terminated Employees, and Active Employees of the Third Party: \$142,845.12.

Thorneloe was therefore provided with the greater claim of \$142,845.12 pursuant to the Compensation Claims Process. The Monitor has not received any Notice of Dispute by the Third Party to date and the Third Party RHBP Claims Bar Date was November 26, 2021. This is a complete answer to any remaining claim being pursued by Thorneloe.

³ *Waters' Law of Trusts in Canada*, 4th ed. (Toronto: Carswell, 2012) at p. 61.

⁴ *New Solutions Financial Corp. v. 952339 Ontario Ltd.* (2007), 29 C.B.R. (5th) 222 (ONSC) [*New Solutions*].

IV. Reasons for Revising Thorneloe's Claim to Disclaimer Costs

The Monitor has determined to allow in part and in the amount of \$1,922,860.93, Thorneloe's unsecured claim in respect of costs arising out of Laurentian's disclaimer of the Federation Agreement and Financial Distribution Notice (the "**Disclaimer**"), largely on the basis that Thorneloe is not entitled to be put into a better position than it would have been in had the Federation Agreement and Financial Distribution Notice been performed.

In the case of an unprofitable contract, if the breaching party could show that the non-breaching party would have incurred a loss had it completed the contract, only nominal damages should be awarded.⁵ In other words, the non-breaching party cannot recover their expenses if those exceed the benefit they would have derived from the contract, had there been no breach.⁶ A non-breaching party is not entitled to be put into a better position than it would have been in had the contract been performed.⁷

Each component of Thorneloe's claim to disclaimer costs will be examined in turn.

i) Severance payments to Thorneloe faculty and employees

Thorneloe claims \$1,481,673 in respect of severance payments it alleges it is required to pay to its terminated employees as a result of the Disclaimer. The Monitor accepts this claim in full.

Thorneloe has demonstrated that the termination of its faculty was reasonably required following the Disclaimer and that such costs were reasonably incurred. Similarly, such costs were likely not too remote. It was likely within the reasonable contemplation of Laurentian at the time the Federation Agreement was entered into that a termination of the Federation Agreement could cause Thorneloe financial difficulty, resulting in layoffs to its workforce.

ii) Additional payments to the Laurentian pension plan

Thorneloe asserts a general unsecured claim in the amount of \$600,000 that it characterizes as a "placeholder" claim in relation to amounts that it may be required to make as a special additional payment to Laurentian in connection with the Pension Plan deficit. The Monitor has determined to disallow this claim in full.

Thorneloe's portion of the Pension Plan deficit was a contingent liability of Thorneloe's, regardless of the Disclaimer. Contrary to Thorneloe's suggestion, Laurentian, by virtue of the Disclaimer, does not become responsible for a liability to Thorneloe's members that properly rested with Thorneloe at the time of the Disclaimer.

⁵ *Sunshine Vacation Villas Ltd. v. Hudson's Bay Co.*, 13 D.L.R. (4th) 93 (BCCA) at para. 33.

⁶ *Ibid.*

⁷ *PreMD Inc. v. Ogilvy Renault LLP*, 2013 ONCA 412 at para. 70.

Moreover, because Laurentian can show that Thorneloe's operation was significantly unprofitable, permitting Thorneloe to recover these costs would put Thorneloe in a better position than it would have been in had the agreement(s) not been disclaimed. Accordingly, Thorneloe is not permitted to recover these amounts.

iii) *Separation costs*

Thorneloe claims in the total amount of \$100,000 for costs it says it must incur to "de-integrate" from Laurentian. These costs relate to capital equipment and related infrastructure for internet, server and telecom facilities for Thorneloe's buildings, software licenses, cybersecurity and internet security insurances, door access, systems, and fees/costs for initial assessment, among other things. The Monitor accepts this claim in full.

Thorneloe has demonstrated that these separation costs are reasonably required following the Disclaimer. Similarly, such costs are likely not too remote. It was likely within the reasonable contemplation of Laurentian at the time the Federation Agreement was entered into that a termination of the Federation Agreement would cause Thorneloe to incur expenses of this kind, as Thorneloe submits.

Thorneloe's claim to these one-time out-of-pocket costs that it would not have to incur had the Federation Agreement been performed are of a materially different nature than its claim to loss to academic and commercial value, described below. As a result, Thorneloe is permitted to recover its separation costs to "de-integrate" from Laurentian.

iv) *Legal and advisor costs*

Thorneloe claims in the amount of \$1,850,000 in respect to the professional fees related to the CCAA proceeding. The Monitor has determined that this claim is disallowed in its entirety.

Existing case law, including the *Homburg* decision, and academic commentary suggests that creditors are not permitted to claim the cost of post-filing professional fees related to the CCAA proceeding.⁸

v) *Insolvency filing costs*

Thorneloe has filed a general unsecured claim in the amount of \$500,000 representing costs that Thorneloe may incur in the future related to an insolvency proceeding. The Farber Report provides that the formal insolvency of Thorneloe is "possible" and that Thorneloe "may" enter a formal insolvency process.⁹

These damages are uncertain, contingent and speculative in their nature and cannot be a basis of recovery. Thorneloe historically incurred substantial operating losses and has not demonstrated that but-for the Disclaimer, Thorneloe would not have commenced a formal insolvency process in any event. Thorneloe's insolvency filing costs are too remote to be recoverable: "[a]bsent special

⁸ *Homburg Invest Inc., Re*, 2014 QCCS 980 [*Homburg*]; Post-Filing Fees of Creditors in CCAA: A Lesson from the Homburg Matter, 2014 ANNREVINSLV 23.

⁹ Farber Report at pp. 41 & 64.

circumstances, one party to a commercial contract generally does not become the insurer of the other party's financial health"¹⁰.

Further, since it appears that Thorneloe's cash and investments exceed its liabilities, it is not necessary for Thorneloe to commence formal insolvency proceedings in order to wind-down. In any case, the costs of funding formal insolvency proceedings should be borne by Thorneloe's estate, not Laurentian. Therefore, Thorneloe is not permitted to recover \$500,000 on account of insolvency filing costs that Thorneloe has failed to demonstrate it will likely incur as a result of the Disclaimer.

Moreover, these amounts are not recoverable as it would result in Thorneloe being put into a better position than it would have been in had the agreement(s) not been disclaimed.

vi) Loss to Thorneloe's academic and commercial value

Thorneloe claims \$9,800,000 based on the loss to academic and commercial value arising from the Disclaimer.

The Monitor disagrees with the legal positions advanced by Thorneloe in support of this portion of its claim. In addition, the Farber Report which Thorneloe has produced does not support Thorneloe's position.

The Farber Report notes that Thorneloe's enterprise value consists of two components: (a) an "operating enterprise value" in the range of approximately \$2.8 million to \$3.3 million; and (b) total non-operating assets of approximately \$6.7 million. The Farber Report arrives at the total non-operating assets figure by taking the total investments reported on Thorneloe's financial statements, which is \$8.6 million, and deducting \$1.9 million, which represents restricted investments that can only be used for certain specific purposes. The Farber Report opines that the remaining \$6.7 million is effectively cash and cash equivalents.

Even assuming that Thorneloe permanently ceases operations and this decision is reasonable and does not breach Thorneloe's duty to mitigate, the Farber Report evidences that Thorneloe's loss from ceasing operations would be its "operating enterprise value" in the range of approximately \$2.8 million to \$3.3 million. The Disclaimer has not caused any loss to Thorneloe's cash and cash equivalents of \$6.7 million. Therefore, at most, the Farber Report supports a claim for the loss of Thorneloe's academic and commercial value in the range of \$2.8 million to \$3.3 million.

With respect to the enterprise value component, the Farber Report estimates that Thorneloe's operating enterprise value immediately prior to the termination of the Federation Agreement was between \$2.8 million and \$3.3 million. The Farber Report determines enterprise value by examining the market capitalization of comparable companies and an adjusted book value. The Farber Report does not expressly take a position on the loss to Thorneloe's academic and commercial value as a result of the Disclaimer and does not provide an opinion on Thorneloe's enterprise value immediately after the Disclaimer.

¹⁰ *D.W. Matheson & Sons Contracting Ltd. v. Canada (Attorney General)*, 2000 NSCA 44 at para. 74.

The Farber Report incorrectly values Thorneloe's operating enterprise value at \$2.8 million to \$3.3 million and should be rejected. From 2018 up to and including the time of the Disclaimer, Thorneloe's revenues were stagnant or decreasing, expenses were increasing, and its general operations were unprofitable. None of the comparable companies referenced in the Farber Report were unprofitable. Therefore, the comparable companies analysis performed by Thorneloe is flawed and does not reasonably or accurately reflect Thorneloe's operating enterprise value.

Thorneloe has provided a revenue forecast, but has failed to provide a forecast of future profit. The Monitor has reviewed Thorneloe's financial statements from 2018 to 2021 and determined that Thorneloe has been incurring losses year-over-year from general operations. It is therefore reasonable to assume that Thorneloe's revenues from operations would have continued to fail to exceed its expenses. As a result, Thorneloe has no basis on which to claim lost profits from its operations arising from the Disclaimer.

NOTICE to CLAIMANT re: Reservation of Rights and Claims Process:

This Notice of Revision or Disallowance is issued without prejudice to any positions, rights, defenses or arguments that Laurentian, Laurentian's insurer(s) or the Monitor have or may have, now or in the future, under any applicable insurance policy, at law or in equity, related to the existence, availability, or enforceability of insurance with respect to any claim, including any claim set out in your Proof of Claim.

The CCAA Claims Process is being conducted for the purposes of determining the validity and value, if any, of asserted claims for voting and distribution purposes within this CCAA Proceeding only. The CCAA Claims Process (including this Notice of Revision or Disallowance, any Claims Officer Determination or any Order or Reasons of the Supervising CCAA Judge in respect thereof) is without prejudice to any positions, rights, defences or arguments that any Claimant, Laurentian, its Directors and/or Officers, their insurer(s) or the Monitor have or may have, now or in the future in respect of any claims asserted against Directors and/or Officers. No finding or determination of any issue respecting the validity or quantum of any claim, if any, against Laurentian shall have any effect whatsoever beyond this Claims Process, and shall not be admissible in or have any effect upon, any subsequent proceeding against Directors and/or Officers including in respect of any applicable insurance policy, related to the existence, availability, or enforceability of insurance as it relates to any claim against any Directors and/or Officers, including any claim against any Directors and/or Officers set out in your Proof of Claim.

SCHEDULE "A.1"

Summary of Monitor's Revision

Claim Type		Amount of Claim per Proof of Claim	Amount of Claim Monitor has Allowed
Pre and Post-Filing Receivables		\$524,783.00	\$341,187.93
RHBP Surplus Contributions		\$23,000.00	\$0.00
Disclaimer Costs		\$14,331,673.00	\$1,581,673.00
	Loss to Academic and Commercial Value	\$9,800,000.00	\$0.00
	Severance Payments	\$1,481,673.00	\$1,481,673.00
	Pension Plan Wind-Up Deficiency	\$600,000.00	\$0.00
	Separation Costs	\$100,000.00	\$100,000.00
	Professional Fees	\$1,850,000.00	\$0.00
	Insolvency Filing Costs	\$500,000.00	\$0.00
Total		\$14,879,456.00	\$1,922,860.93

TAB 5



June 8, 2022

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2819
ahatnay@kmlaw.ca

Via E-Mail: LaurentianUniversity.monitor@ca.ey.com

Ernst & Young Inc.
CCAA Monitor of Laurentian University
100 Adelaide St. West, P.O. Box 1
Toronto, ON M5H 0B3

Dear Sir or Madam:

**Re: Laurentian University CCAA, Court File No. CV-21-656040-00CL
Dispute Notice of Revision or Disallowance of Claim by Thorneloe University**

Enclosed please find the Dispute Notice of Thorneloe University in respect of its claims in its Proof Claim submitted on July 30, 2021 in accordance with section 32(7) of the CCAA which states:

Loss related to disclaimer or resiliation

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

Due to the novel nature of Thorneloe's losses caused by Laurentian's disclaimer of the federation agreements, we have attached a Schedule to the Dispute Notice form that sets out particulars of the disputes in greater detail.

As you are aware, under the Claims Process Order dated May 31, 2021, on the delivery of the Dispute Notice by a creditor, the Monitor, Applicant and creditor are required to attempt to resolve and settle the disputed claims.¹

¹ **RESOLUTION OF CLAIMS**

35. THIS COURT ORDERS that, as soon as practicable after a Dispute Notice is received by the Monitor in accordance with this Order, the Monitor, in consultation with the Applicant and the Creditor, shall attempt to resolve and settle the amount and status of the Creditor's Claim.

36. THIS COURT ORDERS that, in the event that a dispute raised in a Dispute Notice is not settled within a reasonable time period or in a manner satisfactory to the Monitor, the Applicant and the applicable Creditor, the Monitor may, in its sole discretion: (a) refer the dispute to a Claims Officer for determination, or (b) on notice to the disputing Creditor, bring the dispute before the Court for determination.



We look forward to further discussions to attempt to settle the disputed claims.

If you have any questions with respect to Thorneloe University's Dispute Notice or the Schedule, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay", with a stylized flourish at the end.

Andrew J. Hatnay
AJH/vdl: encl.

c. Client
Sydney Edmonds, *Koskie Minsky LLP*

SCHEDULE “E”
DISPUTE NOTICE

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**
 (“LU” or the “Applicant”)

DISPUTE NOTICE

1. PARTICULARS OF CREDITOR

Full Legal Name of Creditor:	Thorneloe University c/o Andrew J. Hatnay, Koskie Minsky LLP
Full Mailing Address of Creditor:	900-20 Queen St. West Toronto, ON M5H 3R3
Telephone Number of Creditor:	416-557-3633
E-mail Address of Creditor:	ahatnay@kmlaw.ca
Attention (Contact Person):	Andrew J. Hatnay - Koskie Minsky LLP

2. PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE:

- (b) Have you acquired this Claim by assignment? Yes ☐ No ☒
 (if yes, attach documents evidencing assignment)

Full Legal Name of original creditor(s): _____

3. DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM:

(Any Claims denominated in a foreign currency shall be filed in such currency and will be converted to Canadian dollars at the rate as set out in the Claims Process Order.)

We hereby disagree with the value of our Claim as set out in the Notice of Revision or Disallowance dated May 25, 2022, as set out below:

Claim Type (Pre-filing Claim, Restructuring Claim)	Claim as Allowed or Revised per Notice of Revision or Disallowance	Claim amount per Creditor
See attached Schedule A (with Appendix)	\$	\$
See attached Schedule A (with Appendix)	\$	\$
See attached Schedule A (with Appendix)	\$	\$
See attached Schedule A (with Appendix)	\$	\$

(Insert particulars of your Claim per Notice of Revision or Disallowance, and the value of your Claim as asserted by you.)

4. REASONS FOR DISPUTE:

Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Claim, as stated by you in item 3 above.

Please see attached Schedule "A" (with Appendix)

If you intend to dispute the Notice of Revision or Disallowance, you must notify the Monitor of such intent by delivery to the Monitor of a Dispute Notice in accordance with the Claims Process Order such that it is received by the Monitor by 5:00 p.m. no later than fourteen (14) calendar days after you receive such Notice of Revision or Disallowance at the following address by prepaid registered mail, courier, personal delivery, facsimile transmission or email:

Ernst & Young Inc.
Court-appointed Monitor of Laurentian University of Sudbury
Ernst & Young Tower
100 Adelaide Street West, P.O. Box 1
Toronto, Ontario M5H 0B3

Hotline: 1-888-338-1766 / 1-416-943-3057
Email: LaurentianUniversity.monitor@ca.ey.com

SCHEDULE "A"

The following are particulars of the Dispute by Thorneloe to the Disallowances of certain of Thorneloe's claims in its Proof of Claim.

To recap, Thorneloe submitted a comprehensive Proof of Claim with different claim categories in respect of the losses suffered by Thorneloe University that were caused to it by Laurentian's disclaimers of the federation agreements. The total amount of the submitted claim was \$14,879,456.00. On May 25, 2022, the Monitor sent a Notice of Disallowance allowing some of the Thorneloe claims and disallowing others. The Monitor allowed Thorneloe claims in the total amount of \$1,922,860.93.

The claims of Thorneloe have novel components due to the unique losses caused by the disclaimer of the federation agreements that allowed Laurentian to immediately cancel all of Thorneloe's courses and programs in the university curriculum which in turn forced Thorneloe to cease to operate. The shuttering of the federated universities was one of Laurentian's objectives to increase its own revenues by herding all students into Laurentian courses and eliminate course and program competition from the federated universities. The disclaimers and the resulting course cancellations necessitated Thorneloe to terminate the majority of its faculty and staff, and caused the payment of a variety of new fees and expenses by Thorneloe, all of which form the basis of its claims against Laurentian under section 32(7).

Thorneloe disputes, in particular, the disallowance of its claims for the loss of commercial value, the professional costs, and the receivables. The different categories of claims and next steps for each for the Notice of Dispute follows:

- a) **The RHBP Surplus Contribution Claim:** This claim was disallowed on the basis that it has been settled through the comprehensive RHBP settlement that was reached after the proof of claim was filed, which settlement was later approved by the court. This disallowance is therefore not disputed.
- b) **Pension Plan Wind Up Deficiency Claim:** In Thorneloe's Proof of Claim, it included this as a potential cost to Thorneloe largely in light of the demand being made by Laurentian for Thorneloe to pay an amount toward a hypothetical future Laurentian pension plan wind up deficiency. Thorneloe opposed such a payment on the basis that there is no obligation for Thorneloe to make such a contribution in the Laurentian Pension Plan text nor under the Ontario *Pension Benefits Act*, and that Laurentian had publicly stated that it had no intention of winding up the pension plan, making a wind-up scenario and cost entirely speculative. While Thorneloe believes that Laurentian has since dropped this demand for Thorneloe to pay toward a wind-up deficiency, in these circumstances this disallowance is not disputed at this time, however, Thorneloe reserves its rights to re-assert this claim if Laurentian demands that Thorneloe pay toward a pension wind-up deficit in the future.
- c) **Insolvency Filing Costs Claim:** As part of the disclaimer motion hearing, Thorneloe produced an expert report by Farber who concluded that with the disclaimers by Laurentian and the resulting cancellation of Thorneloe's courses and programs and the resulting loss

of its income sources, Thorneloe will likely be required to file its own insolvency filing. Accordingly, the costs for such a filing was included in the claim as a loss to Thorneloe caused by Laurentian's disclaimer. To date, and given the costs containment efforts of Thorneloe, an insolvency filing has not yet occurred, and particularly with the abandonment of Laurentian's demand for Thorneloe to pay an amount toward a pension wind up deficiency Thorneloe may not need to file for insolvency. In these circumstances, this disallowance is therefore not disputed at this time, but Thorneloe reserves its rights to re-assert this claim if Thorneloe is required to file for bankruptcy or other insolvency proceeding in the future.

- d) **Pre and Post-Filing Receivables Claim:** This disallowance is disputed. This claim refers to the amount of grant and tuition money that is owing to Thorneloe and that flows through Laurentian but has not been paid in full to Thorneloe at the time of Laurentian's CCAA filing. We have had discussions with the Monitor with respect to the quantum of this claim and currently there remains a dispute over the amount that Laurentian owes to Thorneloe, the allocation as between the pre- and post-CCAA periods, as well as whether there is an amount that should be characterized as a "trust claim" meaning that the amount payable to Thorneloe did not form part of the property of Laurentian and should be sent to Thorneloe in full, rather than treated as an unsecured claim. Farber engaged with the Monitor on the quantum and treatment of these amounts and discussions were ongoing at the time the Disallowance was delivered. As contemplated under paragraph 35 of the Amended Claims Process Order dated May 31, 2021, negotiations should continue to attempt to resolve and the amount and status of this claim. Set out below is a **summary** setting out Thorneloe's calculations of the pre and post CCAA receivables. This assumes that the March/April progress payments totaling \$333,054 were properly applied against the pre-filing amounts, which is consistent with the timing and typical cadence of payments. Thorneloe (and Farber) can provide more detail and full support for all items referenced on the schedule to E&Y:

Schedule of Fees Owning from Laurentian and Calculation of Pre and Post Filing amounts owed
For the year 2020-21

	Total Balance	Received Balance	Balance Owing
Tuition Fees Collected:			
2020-21 SPRING Tuition Collected (net of scholarship)	246,556	246,556	-
2020-21 SPRING Outstanding Tuition (net of scholarship)	19,023		19,023
2020-21 FW Tuition Collected (net of scholarship)	1,192,644	879,884	312,760
2020-21 FW Outstanding Tuition (net of scholarship)	96,068		96,068
Material Fees			
2020-21 SPRING	27,545	27,545	-
2020-21 FW (net of holdback)	63,603	37,031	26,572
Grants			
2020-21 Facilities Renewal Grant	28,500	4,708	23,792
2020-21 Workstudy Grant (Student Subsidy)	1,623	-	1,623
Fees Receivable			
Tuition Fees Receivable from previous years	107,157	-	107,157

Post Filing Claim (Calculated based on Stayed Payable Calc provided by LU as of April 30, 2021)

Total Stayed Payable as per LU 267,730 (A)

Pre-filing claims

Total Stayed Payable as per LU	267,730	(From A above)
Tuition Fees Receivable from previous years	107,157	
2020-21 Spring O/S Tuition (net of scholarship and admin fee)	16,170	
Less: Progress Payment for FW Semester		
On March 4, 2021	(130,000)	
On March 15, 2021	(118,054)	
April 2021 Payment	(85,000)	
Add: Payables not recognized by LU		
2020-21 FW O/S Tuition (net of scholarship and admin fee)	81,658	
2020-21 FW Material Fees (net of holdback)	26,572	
Total Pre-filing claims	166,232	

Payable Post Filing as per LU

	333,136	
Add: Payables not recognized by LU		
2020-21 Facilities Renewal Grant	23,792	
2020-21 Workstudy Grant (Student Subsidy)	1,623	
Total	358,551	

Note: March/April 2021 payments have been applied to pre filing period. Further details & rationale can be provided.

- e) **Loss of Academic and Commercial Value:** This disallowance is disputed. Farber provided an expert report valuing the commercial loss incurred by Thorneloe at approximately \$9.8M caused by Laurentian's disclaimers. Please see the attached Appendix for details about why Laurentian's disallowance is not tenable and is disputed.
- f) **Professional Costs to defend against disclaimer:** This disallowance is disputed. We claimed an amount for the professional costs that Thorneloe had to incur to respond to Laurentian's disclaimer that it brought against Thorneloe. The Monitor refers to the *Homberg* case from the Quebec Superior Court (which is not binding on the Ontario CCAA court) for the general proposition that a creditor cannot claim its legal costs in respect to a CCAA proceeding. However, the costs incurred by Thorneloe go beyond simply participating in a CCAA proceeding. Thorneloe was required to defend against an adversarial disclaimer process brought against it by Laurentian which sought to disclaim its agreements with Thorneloe in order to close down Thorneloe. Under Section 37(1) of the CCAA, the process to follow is that a debtor under CCAA protection (i.e. Laurentian) can deliver a notice of disclaimer to a counter-party to an agreement to bring that agreement to an end, essentially breaching the contract. If the counter-party objects to the disclaimer, it must bring the matter before the court for determination under section 37(2). That is the process that Thorneloe followed in accordance with the CCAA. Bringing a matter such as contesting a disclaimer before a court necessarily involves retaining legal counsel and, in this case, specialized financial advice for which Thorneloe had to incur costs, and accordingly, those costs formed a loss suffered by Thorneloe which, under section 37(7) of the CCAA, is a provable claim.

A summary of the Monitor's revisions to Thorneloe's claim from the Disallowance is reproduced below, with our added fourth column summarizing the disputes of particular components of the claim:

Summary of Monitor's Disallowance of certain of Thorneloe's Claims and Disputes

Claim Type	Amount of Claim per Proof of Claim	Amount of Claim Monitor has Allowed	Summary of Particulars of Dispute
Pre and Post-Filing Receivables	\$524,783.00	\$341,187.93	This claim was partially accepted but there is a dispute and ongoing negotiations regarding the monitor's calculation of pre-filing liability. Thorneloe disputes the specific calculations and treatment of the trust claim.
RHBP Surplus Contributions	\$23,000.00	\$0.00	This claim has been resolved after the filing of the proof of claim. The Disallowance can stand.
Loss to Academic and Commercial Value	\$9,800,000.00	\$0.00	The Disallowance is disputed. Schedule A hereto sets out basis on which this should be challenged.
Severance Payments	\$1,481,673.00	\$1,481,673.00	This claim was accepted in full. No further action required.
Pension Plan Wind-Up Deficiency	\$600,000.00	\$0.00	This disallowance is not disputed at this time but a proviso added that it may be re-asserted if Laurentian ever demands that Thorneloe pay toward a pension wind-up deficit in the future.
Separation Costs	\$100,000.00	\$100,000.00	This claim was accepted in full.
Professional Fees	\$1,850,000.00	\$0.00	This Disallowance is disputed.

Claim Type		Amount of Claim per Proof of Claim	Amount of Claim Monitor has Allowed	Summary of Particulars of Dispute
	Insolvency Filing Costs	\$500,000.00	\$0.00	This Disallowance is not disputed at this time but a proviso added that it may be re-asserted if Thorneloe is required to file its own insolvency proceeding as a consequence of Laurentian's disclaimers.
Total		\$14,879,456.00	\$1,922,860.93	

APPENDIX "A"

DISPUTE PARTICULARS OF DISALLOWANCE OF THORNELOE UNIVERSITY'S LOSS TO ACADEMIC AND COMMERCIAL VALUE CLAIM

The Monitor's disallowance of Thorneloe's Loss to Academic and Commercial Value claim is disputed.

It is clear that it was Laurentian's objective through the disclaimers of the federation agreements with Thorneloe was to close Thorneloe down and eliminate course and program competition from Thorneloe. By doing so, Laurentian could then cancel all Thorneloe courses and programs in the curriculum and herd all Laurentian students into Laurentian courses and maximise its grant and tuition income.

From Laurentian's factum dated April 26, 2021:

5. A critical component of the Applicant's operational restructuring is the termination of the Applicant's contractual relationship with three Federated Universities: the University of Sudbury ("**SU**"), Thorneloe University ("**Thorneloe**"), and Huntington University ("**Huntington**"), and together with SU and Thorneloe, the "**Federated Universities**"). The Applicant has contractual affiliations with the Federated Universities that provide, among other things, that the Applicant's students may take elective courses and enrol in programs at any of the Federated Universities, which are all located on the Applicant's campus.

6. The Federated Universities model comes at significant cost to the Applicant. In Fiscal Year 2020, the Applicant transferred approximately \$7.7 million to the Federated Universities as a result of the Applicant's students taking programs and courses offered through the Federated Universities, rather than solely those programs and courses offered by the Applicant.

7. This represents lost revenue that the Applicant cannot afford – overwhelmingly, these funds relate to the delivery by the Federated Universities of elective courses taken by students enrolled in programs offered by the Applicant. The Applicant has the capacity to offer its students the necessary electives and programs, such that the funding received in respect of the delivery of such courses and programs would stay "in-house".

8. The Applicant is insolvent, and the Federated Universities model is no longer sustainable. In short, there is no prospect for a successful exit from CCAA protection if millions of dollars in revenue continue to be transferred to the Federated Universities each year.

9. After attempts at a negotiated separation failed, on April 1, 2021, the Applicant issued Notices of Disclaimer pursuant to Section 32 of the CCAA to disclaim certain contracts between the Applicant and the Federated Universities.

10. SU and Thorneloe have each filed motions (the "**Motions**"), opposing the Notices of Disclaimer and seeking to have them set aside on the basis of financial hardship.

11. While LU recognizes that the Notices of Disclaimer will necessarily have financial consequences for the Federated Universities, the unfortunate reality is that the termination of the federated relationships, and the financial impact of that result for LU, is a necessary component for a viable restructuring of LU.

From the affidavit of Dr. Robert Hache, sworn April 21, 2021:

182. While LU is cognizant that the Notices of Disclaimer will have financial consequences for the Federated Universities, the unfortunate reality is that the termination of the federated relationships, and the revenue that will remain with LU as a result, is a necessary component of a successful restructuring of LU.

183. As noted above, LU transferred approximately \$7.7 million last year to the Federated Universities. The effect of the Notices of Disclaimer is that revenue for the teaching of students will now stay within LU. Given LU's insolvency, and clearly strained liquidity situation, that is revenue that will be crucial to a successful restructuring, including LU's ability to put forward any Plan of Arrangement that would be acceptable to creditors and could therefore be approved.

184. For that reason, the Thorneloe Disclaimer Motion is misguided when it focuses on the relative proportion of LU's tuition fees, grants, and other costs that are attributable to Thorneloe. LU's ability to put forward a successful Plan relies on finding absolute dollar savings wherever possible – not just from those areas that make up the largest proportion of LU's budget. The \$7.7 million in revenue for last year (and any corresponding relative amounts in future each year) that will be made available by the Notices of Disclaimer is, contrary to the allegations in the Thorneloe Disclaimer Motion, far from "immaterial" to that effort.

185. Moreover, the termination of the federated relationships forms part of a larger strategy by LU to reduce and consolidate the number of programs and courses offered to students, and to focus on those that generate sufficient enrollment and demonstrate financial viability.

186. To the extent that the Disclaimer Motions suggest that the federated relationships can be saved by a simple tweaking of the funding formula, rather than a full disclaimer, that is not the case based on the situation that currently exists. As outlined very extensively in both this Affidavit and the Initial Haché Affidavit, LU is facing a severe economic crisis that led to its insolvency. As a result, LU and its operational structure is in full overhaul mode. That is demonstrated by the drastic changes described above regarding both LU's academic programming and its employees.

187. The changes to the Federated Universities' relationships are similarly significant and critical. The structural challenge presented by the federated relationships is not an issue that can be resolved with tweaks to the existing order. As discussed above, LU previously attempted that type of incremental change by making adjustments to the funding formula in 2019. It was not sufficient. From LU's perspective, we have exhausted our options, including two months of discussions during the Mediation, leading to our termination of the federation relationships.

188. The Notices of Disclaimer are further necessary because additional funding under the Amended DIP Facility will be required in order for LU to continue in operations during the period of the requested stay extension. The DIP Amendment contains a number of Conditions to Funding that must be satisfied before additional funds will be made available under the Amended DIP Facility. One of those Conditions to Funding is that each of the Notices of Disclaimer become effective, binding, and final on May 1, 2021 (30 days after they were issued in accordance with the relevant time period under the CCAA).

189. I am advised by Jonathan Mair of the DIP Lender, and do verily believe, that the DIP Lender has made clear that the satisfaction of this Condition to Funding is essential to the DIP Lender's willingness to advance further funds under the Amended DIP Facility.

190. As described further below, the availability of funds under the Amended DIP Facility is a necessity for LU. The original \$25 million available under the original DIP Facility has been fully drawn and is insufficient for the period of the requested stay extension. If LU is to continue operating in the ordinary course while it successfully restructures its operations, it will require access to funds under the Amended DIP Facility.

191. Given LU's need for funding, and the DIP Lender's Conditions to Funding, it is critical to LU's restructuring efforts that the Notices of Disclaimer become effective as of May 1, 2021.

From the Third Report of the Monitor dated April 26, 2021:

169. The Monitor approved the issuance of the Notices of Disclaimer. For the reasons outlined below, it is the Monitor's view that the Notices of Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant. In fact, it is the Monitor's view that without the Notices of Disclaimer, the Applicant is unlikely to be able to complete a viable plan of compromise or arrangement.

[...]

174. The Federated Universities model represents a significant cost to LU. In Fiscal 2020, LU transferred approximately \$7.7 million to the Federated Universities as a result of LU students taking programs and courses offered through the Federated Universities. This included the transfer of approximately \$3.5 million of grants received by LU, \$5.3 million in net tuition collected from LU students and \$0.3 million in material fees in respect of Federated Universities courses all offset by a 15% service fee of approximately \$1.4 million. A summary of LU's payments to the Federated Universities is attached hereto as Appendix "C".

175. The Monitor understands that the majority of the funds transferred to the Federated Universities relates to the delivery by the Federated Universities of elective courses taken by students enrolled in LU programs as opposed to students enrolled in programs offered through the Federated Universities.

176. In conducting its review of its academic offerings and operational restructuring model, LU determined that it has the ability and capacity to offer a comprehensive list of programs and courses to LU students from the suite of programs and courses delivered by LU faculty in the absence of continuing the Federated Universities relationship. As a result, LU

determined that it could retain the vast majority of the funds transferred to the Federated Universities and continue to support students without incurring those incremental costs.

177. As a result, LU is of the view that savings estimated in the range of \$7.1 to \$7.3 million annually can be generated through the disclaimer of the Federated Universities as part of this restructuring.

178. The Monitor recognizes the potential financial hardship that the Notices of Disclaimer may have for the Federated Universities. However, given the additional savings required for LU to have a reasonable opportunity to put forward a viable plan of compromise or arrangement and effect a successful restructuring, the Monitor is of the view that the disclaimer of the Federated Universities agreements is necessary.

The purpose of a damages remedy is to restore the plaintiff to the same economic position after the damaging act as if the damaging act had not occurred at all (i.e., to make the plaintiff whole).

The Supreme Court of Canada in *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, stated:

[44] The aim of compensatory damages is to restore the wronged party to the position he or she would have been in had the contract not been broken. As the Privy Council stated in *Wertheim v. Chicoutimi Pulp Co.* (1910), [1911] A.C. 301 (Quebec P.C.), at p. 307: 'the party complaining should, so far as it can be done by money, be placed in the same position as he would have been in if the contract had been performed'.

In *Agricultural Research Institute of Ontario v. Campbell-High*, 2002 CarswellOnt 818 (ONCA), the Ontario Court of Appeal stated:

[26] The principle that an innocent party to a breach of contract is entitled to compensation for lost expectation interests means that the party should, insofar as is reasonably possible, be placed in the monetary position he or she would have been in if the contract had been performed.

Lost Profits v. Lost Business Value

The disclaimers had the intended effect of completely shutting down Thorneloe and eliminating its course and programs from the Laurnetioan curriculum and eliminating its revenue sources. Thorneloe therefore has a claim for its lost business value.

In commercial litigation, economic damages are measured in terms of lost profits or lost business value. Generally, the courts have found that if a business continues to operate but at a lesser profitability), the proper measure of damage is determining the business' lost profits. A lost profits approach is appropriate when the harm to the business is for a determinate period of time and can be linked to separately identifiable cash flows.

Alternatively, if a business ceases to operate, or if its value is permanently diminished, such as the case for Thorneloe, the proper measure of damage is determining the diminution in business value, through a business valuation comparing the value of the entity before and after the damaging act.

A claim for lost business value is generally made when the loss period is determined to be indefinite; the business will never fully recover prior profitability or the business has ceased to operate altogether.

Thorneloe has suffered permanent loss of business value real financial loss and has a provable claim:

- Its operations were inextricably tied to Laurentian for almost 60 years. The termination of its main source of revenue was caused by Laurentian's Disclaimer of the federation agreements.
- Unlike the other Federated Universities, Thorneloe has no restructuring plan available to it– they were entirely integrated into the Arts faculty at Laurentian (other than on-line Theology).
- The disclaimer effectively amounts to an “expropriation” of Thorneloe's business. The entire enterprise was disrupted and lost as a result of the disclaimer and the entire Enterprise Value (see below) of Thorneloe was significantly impacted as a result.
- While Thorneloe may not have generated "profits" in recent years, it is a not-for-profit educational institution and a registered charity, - it is not designed nor required to generate "profit" in the business sense. Revenues from provincial sources, tuition fees, and grants supported the delivery of their academic programs. That become increasingly difficult in recent years as the funding formula was changed by Laurentian. Thorneloe responded by undertaking their own financial restructuring prior to Laurentian’s CCAA, which mitigated, but did not eliminate those losses.
- As set out on page 68 of Farber Corporate Finance’s Valuation Report (“Farber Report”), there are two components making up the Enterprise Value of Thorneloe: (a) operating enterprise value range of approximately \$2.8 million to \$3.3 million, to which was added (b) the total non-operating assets of approximately \$6.7 million to arrive at the implied enterprise value.

Below are specific points to respond to the Monitor's statements in its Disallowance of this claim:

Notice of Disallowance:

The Disclaimer has not caused any loss to Thorneloe’s cash and cash equivalents of \$6.7 million. Therefore, at most, the Farber Report supports a claim for the loss of Thorneloe’s academic and commercial value in the range of \$2.8 million to \$3.3 million.

Response:

Termination of the Federation Agreements has caused significant financial liabilities to Thorneloe, including but not limited to severance costs related to the termination of most/all of its academic staff (which the Monitor has allowed) and other liabilities. In order to meet those financial liabilities, Thorneloe had to liquidate the non-restricted portion of its investments, which they are effectively using as cash to fulfill financial obligations caused by the termination of Federation Agreement. Therefore, the non-restricted portion of the investment is treated as cash or cash equivalent and is included as part of Thorneloe's Enterprise Value.

Notice of Disallowance:

The Farber Report does not expressly take a position on the loss to Thorneloe's academic and commercial value as a result of the Disclaimer and does not provide an opinion on Thorneloe's enterprise value immediately after the Disclaimer.

Response:

Based on Farber's discussions with Thorneloe, Thorneloe was integrated with Laurentian from their inceptions and they functioned as "one university". Laurentian and could not continue its operations independently following the disclaimer of the Federation Agreement.

As stated on page 42 of the Farber Report:

In April 2021, Laurentian unilaterally gave notice that it intended to disclaim the Federation Agreements and the Financial Distribution Notice with Thorneloe University, University of Sudbury, and Huntington University. Thorneloe University brought a motion to court opposing the disclaimer of these agreements. The court dismissed that motion, and leave to appeal that decision was denied by the Ontario Court of Appeal.

Termination of the Federation Agreement has caused significant financial hardship to Thorneloe and the University has ceased all teaching operations with the exception of the Theology program; which does not generate significant revenues. Since it has been terminated, Thorneloe will no longer be eligible to receive government grants; one of the University's largest revenue streams. As a result, Thorneloe has terminated all of its academic staff and has only retained a small skeleton administrative staff to oversee the wind-down and possible formal insolvency of Thorneloe.

The monitor is critical that Farber did not consider the enterprise value immediately after the Disclaimer. However, Enterprise Value was effectively destroyed by the Disclaimer and only a skeleton staff remains to deal with trailing issues. There is also a distinction between what is left of Thorneloe and the other two Federated Universities, who are stated to be moving forward with a restructured academic and commercial model.

Notice of Disallowance:

From 2018 up to and including the time of the Disclaimer, Thorneloe's revenues were stagnant or decreasing, expenses were increasing, and its general operations were unprofitable.

Response:

Discretionary changes in Laurentian operations and policies had negatively impacted Thorneloe's financial situation despite various counter-measures taken by Thorneloe to mitigate Laurentian's imposed changes.

As stated in page 41 of the Farber Report:

According to Management, over the past few years, various discretionary changes in Laurentian operations and policies had negatively impacted Thorneloe's financial performance including but not limited to changes to Thorneloe's funding arrangement with Laurentian and reduction of grants. Given that Thorneloe's operations were dependent on the grants received pursuant to the federated agreement with Laurentian, as Laurentian's imposed changes were made, Thorneloe Management expressed that it had no choice but to adjust, restructure, and revise operations as appropriate in order to maintain financial feasibility of its operations. Despite these adjustments, profitability still declined.

While Thorneloe's operations may not have been "profitable" it was never required to be profitable in the commercial sense, but had revenue flows that were ceased by Laurentian's disclaimer.

Notice of Disallowance:

None of the comparable companies referenced in the Farber Report were unprofitable. Therefore, the comparable company's analysis performed by Thorneloe is flawed and does not reasonably or accurately reflect Thorneloe's operating enterprise value.

Response:

The Monitor's criticisms are untenable.

Notwithstanding that Thorneloe exhibited the lowest profitability among the comparable companies and that the comparable companies are profitable, the selected comparator companies are academic institutions which similarly generate earnings through tuition fees and other revenue sources similar to that of Thorneloe, hence they are comparable to Thorneloe.

In selecting market multiples upon which the market capitalization approach was applied, Farber did consider Thorneloe's profitability relative to the comparable companies.

Additionally, Farber had reviewed various other risk and return characteristics of Thorneloe in comparison to the comparable companies as set out on page 60 of the Farber Report:

After reviewing numerous companies fitting the general criteria described above, Farber selected twenty-six companies for comparative purposes. Of these comparable companies, four are publicly traded private universities listed in the U.S. and six are publicly traded private universities listed internationally. Farber believes that the selected companies are comparable to Thorneloe seeing as the comparables are academic institutions which generate earnings through tuition fees and other certain revenue sources similar to Thorneloe. Notwithstanding that certain of the comparable companies may be larger in size, liquidity, historical growth and certain other characteristics further set out herein, the similar nature of the comparable companies' operations provides a reasonable comparative measure of value of universities such as Thorneloe upon which the Market Capitalization approach may be applied. A description of each of the Comparable Companies is provided in Appendix I.

Before drawing any conclusions from the market multiples of the Comparable Companies, it is necessary to complete a comparative analysis in which an assessment is made of Thorneloe's risk and return characteristics relative to the Comparable Companies. The analysis focuses on both quantitative considerations (which include financial performance and other quantifiable data) and qualitative considerations (which include any factors that are expected to impact future financial performance and investors' interpretations of financial results).

As set out on page 61 of the Farber Report:

Farber's review of Thorneloe's qualitative and quantitative factors relative to Comparable Companies indicated the following:

- i. Size
 - a. Thorneloe is the smallest of the Comparables as measured by Enterprise Value, LTM revenue and LTM EBITDA
- ii. Liquidity
 - a. Thorneloe has the fourth lowest liquidity among the Comparables as measured by the current ratio
- iii. Historical Growth
 - a. Thorneloe has exhibited the lowest LTM revenue growth among the Comparable Companies
- iv. Leverage
 - a. Thorneloe has the lowest leverage among the Comparables as measured by total debt/equity %
- v. Profitability
 - a. Thorneloe has exhibited the lowest LTM EBITDA margin among the Comparable Companies

As set out on page 63 of the Farber Report:

Farber's view is that a prospective purchaser of Thorneloe would select a LTM Revenue multiple that is between the minimum and the median of the Comparable Companies due to the following factors, among others:

- i. Special consideration has been given to the multiples of U.S. listed private universities;
- ii. Thorneloe is the smallest in terms of revenue, EBITDA, and enterprise value among the Comparable Companies;
- iii. Thorneloe has the lowest LTM revenue growth among the Comparable Companies;
- iv. Thorneloe has fourth lowest liquidity as measured by the current ratio among the Comparable Companies; and
- v. Thorneloe has the lowest leverage as measured by total debt to equity ratio among the Comparable Companies.
- vi. Thorneloe's operations are dependent on the continued partnership between Laurentian and Thorneloe.

In summary, contrary to monitor's position, Farber carefully considered all of the factors above in selecting a suitable LTM Revenue multiple to apply in the valuation calculations. The multiples assumed were between the minimum and the median of the Comparable Companies.

TAB 6

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**

CLAIM OF THORNELOE UNIVERSITY

BEFORE: W. Niels Ortved (Claims Officer)

HEARD: By Written Submissions

APPEARANCES:

For the Claimant, Thorneloe University: Andrew J. Hatnay and Demetrios Yiokaris

For the Respondent, the Monitor of
Laurentian University of Sudbury: Ashley Taylor, Maria Konyukhova and
Ben Muller

DECISION

1. This matter concerns a claim made by Thorneloe University ("Thorneloe" or the "Claimant") against Laurentian University ("Laurentian" or the "Respondent") in the amount of \$14,879,546.00 for alleged losses caused by Laurentian's disclaimer of the Federation Agreement between Thorneloe and Laurentian (the "Claim").

INTRODUCTION

2. On February 1, 2021, Laurentian brought an application before the Ontario Superior Court of Justice pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and was granted an initial Order to enable it, among other things, to appoint Ernst & Young Inc. as Monitor of Laurentian and to obtain a stay of proceedings to allow Laurentian an opportunity to restructure itself financially and operationally (the "Initial Order").

3. On May 31, 2021, the Court granted a further Order made in the Laurentian CCAA proceedings, the Claims Process Order, which established a process to identify, determine and resolve claims of Laurentian's creditors.
4. In accordance with the claims process, Thorneloe filed an initial Proof of Claim on July 30, 2021 in the amount of \$16,559,080.00, which was comprised of two trust claims, namely, a pre- and post-filing receivables claim and a surplus retirement benefits contributions claim, together with a general unsecured disclaimer claim.
5. On December 17, 2021, Thorneloe amended its Proof of Claim, specifically a component of the disclaimer claim for the loss of Thorneloe's academic and commercial value, reducing that claim from \$11,479,624.00 to \$9,800,000.00, with the result that the amended total amount of the Claim was \$14,879,456.00.
6. On May 25, 2022, on behalf of the Respondent, the Monitor filed a Notice of Revision or Disallowance (the "NORD") which allowed the amount of \$341,187.93 in respect of the pre- and post-filing receivables claim and the amount of \$1,581,673.00 in respect of the disclaimer claim, the total amount allowed being \$1,922,860.93.
7. On June 8, 2022, Thorneloe filed a Dispute Notice accepting the amount of \$1,581,673.00 in respect of the disclaimer claim. The balance of the pre- and post-filing receivables claim in the amount of \$183,595.07 remained in issue. The claim in respect of surplus retirement benefits contributions was acknowledged to have been resolved. The disallowances in respect of two of the components of the disclaimer claim were not contested. In the result, the outstanding claims as of that date were the receivables balance and a disclaimer claim in the amount of \$11,650,000.00.
8. In the Factum filed on behalf of Thorneloe on August 22, 2022, it was confirmed that the balance of the pre- and post-filing receivables amount is no longer being pursued. Thus, the amount of the Claim that remains in issue is \$11,650,000.00. The specific components comprising the Claim and the outstanding amount will be addressed in the body of the Decision.
9. Pursuant to paragraph 36 of the Claims Process Order, this matter was referred to a Claims Officer for determination. It was agreed that the issues raised were amenable to being determined on the basis of the written materials filed by the Claimant and the Respondent.

BACKGROUND

10. In 1960, the University of Sudbury, the Anglican Diocese of Algoma, and the United Church of Canada petitioned the Ontario government to establish Laurentian as a non-denominational, bilingual university to serve the Sudbury community. The enabling legislation specifically contemplates that Laurentian would enter into federation agreements with church-related universities or colleges and that credits from such institutions would be treated as if they were given in Laurentian's "University College." Absent federation, religiously-affiliated institutions were not eligible for government funding.
11. The Claimant is a corporation incorporated on March 29, 1961 under *An Act to Incorporate Thorneloe University*, S.O. 1960-1961, c. 135, as amended. In 1962, Thorneloe entered into a Federation Agreement with Laurentian (collectively, the "Parties"). The Federation Agreement formalized the relationship between Laurentian and Thorneloe. In accordance with the Federation Agreement, Laurentian's students were permitted to take elective courses and enrol in programs offered by Thorneloe. In addition, Laurentian was required to allocate and reserve land on its campus to permit the Claimant to construct buildings.
12. Pursuant to the Federation Agreement and consistent with its enabling legislation, Thorneloe agreed to suspend its degree-granting powers during the time that the Federation Agreement was in effect, excluding the powers associated with its Theology programs. As a result, until the disclaimer of the Federation Agreement, students who completed programs at Thorneloe graduated with a degree from Laurentian (with the exception of Theology programs). As part of the Federation Agreement, tuition and grants received by Laurentian were to be apportioned between Laurentian and Thorneloe as agreed upon by the Parties.
13. In accordance with the Federation Agreement, the Parties, in addition to the other federated universities, entered into a series of agreements to address the allocation of tuition collected by Laurentian, operating grants, and certain fees for administrative services provided by Laurentian to Thorneloe. The final funding distribution and service fees agreement entered into in this regard was dated November 10, 1993.
14. On May 10, 2019, Laurentian delivered to Thorneloe a notice (the "Financial Distribution Notice") to amend and supersede certain financial terms related to the allocation of tuition fees, grant funding, and administrative services by and among the Parties. The Financial Distribution Notice was intended to align the financial relationship of Laurentian and the federated universities with a new university funding model introduced by the Province of Ontario. Pursuant to the Financial Distribution Notice, Laurentian retained 15% of the per student funding for courses provided to students through Thorneloe.

15. On February 1, 2021, Laurentian sought and obtained protection under the CCAA. In connection with the CCAA proceedings, on April 1, 2021, Laurentien delivered a Notice of Disclaimer to Thorneloe seeking to disclaim the Federation Agreement and the associated Financial Distribution Notice pursuant to s. 32(1) of the CCAA (the “Disclaimer”).
16. Thorneloe opposed the Disclaimer, and, together with the University of Sudbury, moved to have their respective Notices of Disclaimer set aside pursuant to s. 32(2) of the CCAA.
17. The motions brought by the Claimant and the University of Sudbury were dismissed by the Court on May 2, 2021. In its reasons on the challenge brought by the Claimant, the Court held that the Notices of Disclaimer were central to Laurentian’s restructuring and that the potential demise of Laurentian would be an implication of disallowing the Notices of Disclaimer. The Court also rejected the argument that Laurentian had been acting in bad faith by issuing the Notices of Disclaimer. In the end, the Court acknowledged that upholding the Notices of Disclaimer could lead to the cessation of operations at Thorneloe but held that “the impact this could have on the Claimant’s faculty, employees and students is significantly less than if the Notices of Disclaimer were set aside with the result that Laurentian and Thorneloe are both forced to suspend or cease operations.” (see *Laurentian University of Sudbury*, 2021 ONSC 3272, at paras 52, 75 and 77, and *Laurentian University v. Sudbury University*, 2021 ONSC 3392).
18. Following the Disclaimer, Thorneloe ceased all academic operations, except in relation to its Theology program. Thorneloe had been a relatively small component of the Laurentian federation, employing a workforce of 28 persons, including 7 full-time faculty members, 12 sessional faculty members, 6 staff and 3 casual staff. As a result of the Disclaimer its faculty and staff were reduced to four persons. Only 36 students remained in its on-line Theology program.

THE CLAIM

19. To supplement the brief overview of events summarized in the Introduction, it is important to provide particulars of the specific losses alleged on the part of Thorneloe which, when totalled, comprise the Claim in the amount of \$14,879,546.00. It is also appropriate to detail the resolution of certain components of that total Claim to identify the remaining components to be determined in this hearing.

20. Details of the components and the chronology in respect of Thorneloe's Claim are as follows:

	Amended Claim	Amount	Amount In Issue
(i)	Receivables Owed	\$524,783.00	
(ii)	Retiree Benefits Surplus	\$23,000.00	
(iii)	Loss of Commercial Value	\$9,800,000.00	
(iv)	Severance Payments	\$1,481,673.00	
(v)	Pension Deficiency	\$600,000.00	
(vi)	Separation Costs	\$100,000.00	
(vii)	Professional Costs	\$1,850,000.00	
(viii)	Insolvency Costs	<u>\$500,000.00</u>	
		\$14,879,546.00	\$14,879,456.00

Claims Allowed/Accepted (NORD)

(i)	Receivables Owed (Partial)	\$341,187.93	
(iv)	Severance Payments	\$1,481,673.00	
(v)	Separation Costs	<u>\$100,000.00</u>	
		\$1,922,860.93	\$12,956,595.07

Claims Disallowed and Not Contested (NC) or Not Pursued (NP)

(i)	Receivables Owed (Balance) (NP)	\$183,595.07	
(ii)	Retiree Benefits Surplus (NC)	\$23,000.00	
(v)	Pension Deficiency (NC)	\$600,000.00	
(vii)	Insolvency Costs (NC)	<u>\$500,000.00</u>	
		\$1,306,595.07	\$11,650,000.00

21. The outstanding components of the claim are items (iii) Loss of Commercial Value in the amount of \$9,800,000.00 and (vii) Professional Fees in the amount of \$1,850,000.00 which, added together, comprise the amount remaining in issue totalling \$11,650,000.00. These two claims will be addressed in the Analysis Section of the Decision.

THE LEGAL CONTEXT

22. Prior to a consideration of the outstanding components comprising Thorneloe's Claim, it is important to examine the foundation for the Claim, and the legal principles which bear on the recovery of alleged losses.

(a) Section 32 of the CCAA

23. Subsection 32(1) of the CCAA provides as follows:

“Subject to subsections (2) and (3), a debtor company may - on notice given in the prescribed form and manner to the other parties to the agreement and the monitor - disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.”

24. In the instant case, the Monitor approved the Disclaimer. It is significant, as noted previously, that the Disclaimer was also approved by the Court (see *Laurentian University of Sudbury, op. cit.*, leave to appeal dismissed, *Laurentian University of Sudbury (Re)*, 2021 ONCA 448).

25. Subsection 32(7) of the CCAA provides as follows:

“If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.”

26. In its Factum, Thorneloe focuses on two phrases in s. 32(7), namely, **suffers a loss in relation to the disclaimer** and **is considered to have a provable claim**. The argument advanced on behalf of Thorneloe is that:

“Based on the language of s. 32(7), there are only two factors that need to be met for Thorneloe's commercial loss and cost claims to be valid claims: that they are losses suffered “in relation to” the disclaimers, and that they are “provable”. Both factors are readily met for both claims.”

27. The Monitor disagrees with Thorneloe's interpretation of s. 32(7). The Monitor's position is that s. 32(7) provides that the disclaimed party is considered to have a “provable claim” once it demonstrates that it has suffered a loss. A “provable claim” is what every creditor of the CCAA debtor is entitled to.

28. Contrary to the position advanced on behalf of Thorneloe, the Monitor urges the view that a party with a claim arising under s. 32(7) of the CCAA is entitled to no greater claim than a party would be entitled to for breach of contract in the ordinary course because s. 32(7) is concerned, in substance, with contracts. According to the Monitor, there is nothing in s. 32(7) or in the scheme the CCAA generally suggesting that s. 32(7) is intended to provide a creditor whose agreement with the debtor has been disclaimed with a claim in excess of what the claimant would otherwise be entitled to outside of a CCAA proceeding.
29. The Monitor points out that the Claimant cites no authority its position that “there are only two factors that need to be met for Thorneloe’s commercial loss and costs claims to be valid claims: that they are losses suffered “in relation to the disclaimers” and that they are “provable.” The Claimant’s position, if accepted, would pose minimal controls on the types of losses that are recoverable pursuant to s. 32(7) of the CCAA and would allow claims for losses that would not otherwise be recoverable for breach of contract.
30. The point is made that on several occasions the Claimant concedes in its Factum that the disclaimer of an agreement under the CCAA is in substance a breach of contract. The Claimant does not explain why, if the disclaimer of an agreement under the CCAA is in substance a breach of contract, it should be entitled to a greater claim than it would be entitled to for breach of contract in the ordinary course.
31. In the Monitor’s submission, in addition to demonstrating that the losses claimed are suffered “in relation to the disclaimer” and that they are “provable”, the damages sought must also be recoverable under ordinary contract law and CCAA principles.
32. On the issue of the interpretation of s. 32(7), I disagree with the position advanced on behalf of Thorneloe to the effect that the Claimant need only establish that, in relation to the disclaimer, it suffered losses and the losses are “provable”. Rather, I agree with the interpretation urged on behalf of the Monitor that Thorneloe is not entitled to a greater claim than a party would be entitled to for breach of contract in the ordinary course.

(b) The Assessment of Damages

33. The Monitor’s position is that the critical legal issue in interpreting s. 32(7) is whether a party is entitled to recover all of its losses in relation to the disclaimer or whether the party’s claim is limited, for example, by principles of remoteness, causation or intervening acts. In assessing damages for breach of contract, a party’s losses are limited by such principles. Those principles should similarly apply in the case of an alleged loss as a result of a disclaimer.
34. The customary remedy for a breach of contract is compensation measured in expectation damages, also known as lost profits. Expectation damages should put a claimant in the position

that it would have been in had the contract been performed (see *C. M. Callow Inc. v. Zollinger*, 2020 SCC 45, at para. 107).

35. However, damages must not be too remote. Damages must arise (a) fairly, reasonably and naturally in the usual course of things as a result of the breach, or (b) if they were in the reasonable contemplation of the parties at the time the contract was formed (see *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, at para.29).
36. The Monitor points out that reliance damages may be appropriate where it would be difficult for a claimant to prove the position it would have been in had the contract been performed, or where the contract has been unprofitable. Reliance damages amount to wasted expenditures, such as expenses that the injured party incurred in reliance on the contract that would not have been incurred had it known that the contract would be or had been breached (see *C.M. Callow Inc. v. Zollinger*, *op. cit.*; *PreMD Inc. v. Ogilvy Renault LLP*, 2013 ONCA 412, at para. 70).
37. On the other hand, a claim to reliance damages is limited in two important ways: (1) a claimant is entitled to recover only those expenses that were truly wasted, that would not have been incurred but for the contract; and (2) a claimant is not entitled to recover expenses that would have been wasted regardless of the breach (see *PreMD Inc. v. Ogilvy Renault LLP*, *op. cit.*, at para. 66).
38. The Monitor also addresses the issue of unprofitable contracts. Specifically, in the case of an unprofitable contract, where the non-breaching party makes a claim based on the expectation measure of damages, if the breaching party can show that the non-breaching party would have incurred a loss had it completed the contract, only nominal damages are owed. This result follows because there cannot be a claim for lost profits where the non-breaching party would not have earned any profits (see *Sunshine Vacation Villas v. Hudson's Bay Co.*, 13 D.L.R. (4th) 93 (BCCA)).
39. Similarly, where the contract is unprofitable and a non-breaching party claims for wasted expenses, the limitation on reliance damages prevents recovery of expenses if those expenses exceed the benefit that would be derived from the contract had there been no breach. In short, a non-breaching party is not entitled to be put into a better position than it would have been in had the contract been performed (see *PreMD Inc. v. Ogilvy Renault LLP*, *op. cit.*, at para. 70).
40. Regarding the principles applicable to the assessment of damages, I conclude that the wording of s. 32(7) engages the same principles of damage assessment as are customarily applied for breach of contract. I accept that the Monitor has accurately set out those assessment principles on which I rely in my ensuing analysis of the Thorneloe claim.

ANALYSIS

(i) Loss of Academic and Commercial Value (\$9,800,000.00)

(a) The Claimant's Position

41. This claim on the part of Thorneloe is summarized in the Claimant's Factum as follows:

“Laurentian's disclaimer of the Federation Agreement directly caused Thorneloe to lose its income sources, faculty and staff and cease to be able to operate as a teaching university. It lost all its income-generating ability and hence lost its commercial value.”

42. In its materials filed in support of its Claim, the Claimant expanded on this summary. As stated in those materials, prior to Laurentian's Disclaimer, Thorneloe was a respected, functional university that was integrated with Laurentian for over 60 years. Its courses were popular with students and highly regarded in the academic community. The Disclaimer and the termination of the Federation Agreement with the associated cancellation of apportioned grants and tuition has divested Thorneloe of its ability to offer courses to Laurentian students. Indeed, it does not have the ability or infrastructure to operate outside of its federation with Laurentian. The apportioned fees and grants were essential to sustain Thorneloe's operations and to meet its operating costs and liabilities. The termination of the Federation Agreement has permanently caused a loss of value to Thorneloe's operations resulting in a permanent loss of business value to Thorneloe.

43. To assist with its Claim, Thorneloe retained Mr. Glen Bowman, CBV, Senior Managing Director of Farber Corporate Finance Inc., to prepare a report as an expert valuator. The substantial 87-page report (the “Farber Report”) was filed in support of Thorneloe's Claim. The Farber Report valued the commercial loss to Thorneloe in the total amount of \$9,800,000.00. Specifically, at p. 70 of the Report, the “Summary and Conclusion” is stated as follows:

“As set out in Appendix A, based on information and data relied upon, and subject to the restrictions and qualifications and assumptions and major considerations noted herein, Farber has concluded that the estimated enterprise value of Thorneloe on or about the Valuation Date to be in the approximate range of \$9.5 million to \$10 million. If Farber were asked to select a particular value, it would select the midpoint of \$9.8 million.”

It should be noted that the Valuation Date referred to in the Farber Report is defined at p. 5 to be April 30, 2021 “being the date on which Laurentian delivered disclaimers of the Thorneloe

Federation Agreement and Financial Distribution Notice pursuant to section 32(7) of the CCAA.” In fact, the Disclaimer was delivered on April 1, 2021. It appears clear that the Valuation Date was meant to be April 1, 2021 since the Farber Report does not provide an opinion on Thorneloe’s enterprise value after the Disclaimer.

44. The Claimant’s position is that the Farber Report should be determinative of the proof of Thorneloe’s commercial loss claim on the basis that “only professionals with the Certified Business Valuator (CBV) designation can testify to provide expert evidence on business valuations.” Mr. Bowman has the requisite qualifications and the Farber Report is the only report filed (see *Laderoute v. Heffernan*, 2019 ONSC 914, at para. 13).
45. The Claimant goes further and takes the position that because the Farber Report was neither contradicted by a responding report nor tested on cross-examination, the Respondent is effectively estopped from challenging the conclusions contained in that Report (see *McNevan v. Agrico Canada Ltd.*, 2011 ONSC 2035, *Capelli v. Nobilis Health Corp.*, 2019 ONSC 2266, and *Erco Industries Ltd. v. Allendale Mutual Insurance Co.*, [1988] OJ no. 2,62 O.R. (2d) 766 (ONCA).
46. The Claimant submits that a damage claim based on loss of commercial value where a party harms or destroys another’s business is provable by expert evidence and for which compensatory damages are payable. Reliance is placed on two decisions in which the plaintiffs, whose businesses were unprofitable, and were damaged, were in each case compensated based on the amount of their business value (see *McLachlan v. Canadian Imperial Bank of Commerce*, [1989] BCJ No. 389, [1989] BCWLD 1106 (BCCA), hereafter “*McLachlan*”, and *Ronald Elwyn Lister Ltd. v. Dayton Tire Canada Ltd.*, [1985] OJ No. 2633, 52 O.R. (2d) 88 (ONCA), hereafter “*Lister*”).

(b) The Respondent’s Position

47. The Respondent disputes Thorneloe’s claim for loss of academic and commercial value on two principal bases: (1) the Monitor disagrees with the legal basis advanced by Thorneloe in support of this claim; and, (2) it is the Monitor’s submission that the Farber Report does not support Thorneloe’s position.
48. Dealing initially with the Farber Report, the Monitor points out in its Factum that the Claimant has not addressed the reasons for the Monitor rejecting the conclusions of the Farber Report detailed in the NORD filed by the Monitor. Those reasons are summarized in the NORD as follows:

“The Farber Report notes that Thorneloe’s enterprise value consists of two components: (a) an “operating enterprise value” in the range of approximately \$2.8

million to \$3.3 million; and (b) total non-operating assets of approximately \$6.7 million. The Farber Report arrives at the total non-operating assets figure by taking the total investments reported on Thorneloe's financial statements, which is \$8.6 million, and deducting \$1.9 million, which represents restricted investments that can only be used for certain specific purposes. The Farber Report opines that the remaining \$6.7 million is effectively cash and cash equivalents.

Even assuming that Thorneloe permanently ceases operations and this decision is reasonable and does not breach Thorneloe's duty to mitigate, the Farber Report evidences that Thorneloe's loss from ceasing operations would be its "operating enterprise value" in the range of approximately \$2.8 million to \$3.3 million. The Disclaimer has not caused any loss to Thorneloe's cash and cash equivalents of \$6.7 million. Therefore, at most, the Farber Report supports a claim for the loss of Thorneloe's academic and commercial value in the range up \$2.8 million to \$3.3 million.

With respect to the enterprise value component, the Farber Report estimates that Thorneloe's operating enterprise value immediately prior to the termination of the Federation Agreement was between \$2.8 million and \$3.3 million. The Farber Report determines enterprise value by examining the market capitalization of comparable companies and an adjusted book value. The Farber Report does not expressly take a position on the loss to Thorneloe's academic and commercial value as a result of the Disclaimer and does not provide an opinion on Thorneloe's enterprise value immediately after the Disclaimer.

The Farber Report incorrectly values Thorneloe's operating enterprise value at \$2.8 million to \$3.3 million and should be rejected. From 2018 up to and including the time of the Disclaimer, Thorneloe's revenues were stagnant or decreasing, expenses were increasing, and its general operations were unprofitable. None of the comparable companies referenced in the Farber Report were unprofitable. Therefore, the comparable companies analysis performed by Thorneloe is flawed and does not reasonably or accurately reflect Thorneloe's operating enterprise value.

Thorneloe has provided a revenue forecast, but has failed to provide a forecast of future profit. The Monitor has reviewed Thorneloe's financial statements from 2018 to 2021 and determined that Thorneloe has been incurring losses year-over-year from general operations. It is therefore reasonable to assume that Thorneloe's revenues from operations would have continued to fail to exceed its expenses. As a result, Thorneloe has no basis on which to claim lost profits from its operations arising from the Disclaimer."

49. As the Monitor made clear in its commentary, the Farber Report is based on hypotheticals and assumptions that do not reflect the Claimant's financial reality. The Farber Report implies that the Claimant is a profitable entity and does not reflect its actual historical financial results.

50. The Farber Report ascribes a value to the Claimant's business based on a revenue multiplier. The Farber Report does not consider the Claimant's net cash flow, that is, revenue less expenses. The Claimant's net cash flow was negative because its operations were incurring substantial expenses making a revenue multiplier inappropriate. Because the Claimant's net cash flow is reasonably expected to continue to be negative, it is not entitled to claim damages for a loss of academic and commercial value.
51. Regarding the submission that the Claimant's expert opinion has not been challenged, the Monitor's response is that it was entitled to scrutinize the Claimant's evidence and reject it based on its "patently flawed analysis." The Respondent submits that it was under no obligation to proffer evidence in response. The Respondent emphasizes that a claims process proceeding in a CCAA matter is not a formal trial.
52. As noted above, the Respondent also disputes the legal basis for Thorneloe's claim for loss of academic and commercial value. The Respondent argues that the claim must be assessed based on the ordinary measure of damages in contract law, that is, damages for lost profits. The Farber Report does not comment on the Claimant's lost profits.
53. Concerning *McLachlan* and *Lister*, the authorities relied upon by the Claimant in support of its submission that the commercial value of the business may serve as the basis for assessing damages, the Monitor argues that the Claimant's interpretation of these cases is misplaced. In those cases the respective courts deferred to the findings of the courts at first instance which accepted the value of the businesses as an acceptable measure where the businesses were in each case expected to generate a profit in the future. That is importantly not the instant case.
54. In fact, since performance of the Federation Agreement would have resulted in net losses for the Claimant, it is not entitled to any damages as a result of the Disclaimer. The Claimant is in a better financial position with the Federation Agreement disclaimed than it would have been in had there been no Disclaimer.
55. Finally, the Monitor submits that Thorneloe's claim is also limited by its duty to mitigate. The Claimant is required to take reasonable steps to avoid the consequences of the Disclaimer. The Respondent argues that the Claimant has not satisfactorily explained why it has not, or cannot, mitigate its losses.
56. It should be noted that in the Reply Factum filed by the Claimant, the point is made that "even if Thorneloe had been unprofitable in the accounting sense in recent years... it is entirely reasonable to assume that Thorneloe would have nevertheless continued to operate *but for* Laurentian disclaiming the Federation Agreement."

57. The Reply Factum also takes issue with the Respondent's submission that Thorneloe did not take sufficient measures to mitigate its loss. The Claimant suggests that it is unreasonable to expect Thorneloe to mitigate its losses in the circumstances.

(c) Conclusion

58. The claim in issue is the amount of \$9,800,000.00 based on Thorneloe's alleged loss of academic and commercial value arising from the Disclaimer. The viability of this claim relies on two essential bases; that is, the Farber Report and the applicable damage assessment principles.
59. First, regarding the Farber Report, the Monitor spelled out significant criticisms of the methodology employed and the conclusions reached in the Report in the NORD filed in May, 2022. Those criticisms specified in detail why, in the view of the Monitor, the Farber Report is seriously flawed. As far as I am concerned, those criticisms have not been sufficiently answered.
60. In particular, the response on the part of the Claimant has not been to address those criticisms, but to take the position that the Farber Report has not been challenged with a responding report or on cross-examination. I disagree with this position. This is a claims process in a CCAA matter which the Claimant understands may take the form of a summary proceeding, not a formal trial. A responding report is certainly not obligatory in this instance. It is well to remember that the Claimant agreed to a hearing based on written submissions. In my view, it is not open to the Claimant to then take the position that the Respondent is estopped from relying on a written challenge or because there was no cross-examination.
61. Separate and apart from the issue of whether a loss of commercial value may serve as a basis to assess damages due to breach of contract, in view of the serious questions raised by the Monitor which have not been addressed, I am not persuaded that the Farber Report is a reliable measure of Thorneloe's academic and commercial value prior to the Disclaimer.
62. Second, regarding the applicable principles for the assessment of damages, it is on this basis that the Monitor strenuously resists the claim. Thorneloe appears to concede in its materials that Thorneloe lacked profitability prior to the Disclaimer. The Claimant argues that an enterprise can still be valuable even if not profitable. The Claimant takes the position that the alleged commercial value of Thorneloe's business should serve as the measure for the assessment of damages even if the expectation is continued future losses.
63. The Monitor contests the Claimant's submission. The Monitor argues that the ordinary and applicable measure of damages in this instance are damages for breach of contract. Thorneloe's

claim must be assessed on the basis of expectation damages, that is, what position would the Claimant be in had the contract not been breached.

64. The Monitor submits that *McLachlan and Lister* on which the Claimant relies are not exceptions to that principle. I concur that those decisions do not provide support for the Claimant, but not restricted to the findings by the trial Courts at first instance, accepted on appeal, that in each case the businesses in question were going concerns with prospects of future profits. It is also significant that in both cases the damage assessments were in consequence of intentional torts, not an assessment of damages based on breach of contract.
65. According to the Monitor, the Claimant's operations being carried out under the Federation Agreement were not profitable. Any suggestion that the Claimant may earn profits in the future is highly speculative and cannot form the basis of a claim for lost profits. The Claimant's actual position is that future losses are the expectation. In these circumstances, according to the principles regarding unprofitable contracts, the Claimant is not entitled to damages for lost profits.
66. In the result, is my conclusion that the Monitor has established, and the Claimant has not seriously contested, that Thorneloe was not profitable prior to the Disclaimer, nor that its results would have improved in subsequent years had there been no Disclaimer. Thus, the Claimant has not "proved" a compensable loss. I accept that this is the correct approach to the assessment of damages, not the measurement of alleged loss of commercial value as argued by the Claimant. Accordingly, taken together with my reservations concerning the conclusions of the Farber Report, Thorneloe's claim for loss of academic and commercial value is therefore denied.

(ii) Professional Costs (\$1,850,000.00)

(a) The Claimant's Position

67. Thorneloe claims the amount of \$1,850,000.00 for professional costs and expenses incurred defending against the Disclaimer generally, including the legal costs of moving against the Disclaimer in Court and for the costs of the Farber Group.
68. This claim was included in Thorneloe's Proof of Claim but it was disallowed in the NORD filed by the Monitor on the basis that:

"Existing case law, including the *Homburg* decision, and academic commentary suggests that creditors are not permitted to claim the cost of post-filing professional fees related to the CCAA proceeding."

69. The Claimant acknowledges the *Homburg* decision but takes the position that it is inapplicable in relation to the instant case in that it did not involve a disclaimer under s. 32 of the CCAA (see *Homburg Invest Inc., Re*, 2014 QCCS 980, hereinafter “*Homburg*”).
70. The Claimant’s submission is that s. 32(7) is a statutory exemption to the general rule and provides that a party to the agreement who suffers a loss in relation to the disclaimer or resiliation “*is considered to have a provable claim*”, an interpretation of s. 32(7) discussed previously in this Decision in the Section entitled The Legal Context.
71. In relation to this claim for professional costs, the Claimant places reliance on a decision of a Master in a British Columbia case concerning an appeal of a trustee’s disallowance of a lease disclaimer under the provisions of the *Bankruptcy and Insolvency Act* (the “BIA”). In that case, the Master had to consider what constitutes a claim for “the actual losses resulting from the disclaimer.” The Master concluded that the phrase should not be narrowly construed (see *Bryant, Fulton and Shee Advertising Inc., Re*, 2012 BCSC 1381, referred to hereafter as “*Bryant*”).
72. The Claimant argues that since the creditor’s legal fees were allowed by the Court as “actual losses resulting from the disclaimer” in the *Bryant* case under very similar language in the BIA, then it follows that Thorneloe’s costs in this case should similarly be considered “in relation to the disclaimer” under s. 32(7) of the CCAA and therefore a valid claim.

(b) The Respondent’s Position

73. In responding to this claim, the Monitor points out that the claim for professional costs is largely made up of professional fees incurred in connection with the Claimant’s motion to set aside the Disclaimer, which motion was unsuccessful, both at first instance and on the application for leave to appeal.
74. The Monitor points out that the Claimant has not provided a single example where a creditor was permitted to claim its post-filing professional fees in the context of a CCAA proceeding. In contrast, the Monitor notes the only case to consider this issue in depth, *Homburg*, held that creditors are not permitted to claim the cost of post-filing professional fees related to a CCAA proceeding.
75. The Monitor’s position is that the Claimant’s interpretation of *Homburg* is overly narrow. Although the *Homburg* case did not deal with a s. 32(7) claim, the reasoning is substantially applicable to such a claim.

76. As has been explained, a s. 32(7) claim is essentially a contract claim. Whether the breach of contract occurs pre-filing or post-filing is not significant. In both cases, the creditor is not entitled to claim its post-filing professional fees. The academic commentary states: “[t]he lesson arising from the *Homburg* decision is that the general rule in CCAA is to the effect that unsecured creditors should not recover their fees incurred after the filing date, neither in full nor even in part as part of their proofs of claim” (see Post-Filing Fees of Creditors in CCAA: A Lesson from the *Homburg* Matter, 2014 ANNREVINSOLV 23).
77. The Monitor submits that the Claimant's reliance on *Bryant* is in error. That case concerned s. 65.2 of the BIA which deals specifically with disclaimers of leases, not all types of contracts. A different section of the BIA, s. 65.11(8), deals with disclaimers of contracts (other than leases) and employs language identical to s. 32(7) of the CCAA.
78. Subsection 65.2(4)(b) of the BIA, the particular section applied in *Bryant*, provides a disclaimed landlord with a claim for “actual losses resulting from the disclaimer”. In contrast, s. 65.11(8) of the BIA, and s. 32(7) of the CCAA, provide a disclaimed party with the option to bring a “provable claim.” Thus, *Bryant* and s. 65.2 of the BIA are irrelevant to a determination as to whether the Claimant has a provable claim.
79. Regarding the *Bryant* decision relied on by the Claimant, the Monitor stresses that this was a case decided under a different statute containing different language regarding disclaimers specifically of leases, not contracts of all types, of no precedential value, and of minimal persuasive value in Ontario CCAA proceedings.

(c) Conclusion

80. I accept the Monitor's position that the *Homburg* case is the applicable authority in an Ontario CCAA proceeding setting out the established practice and the rationale for it.
81. I find that the Claimant has not provided a basis to treat its claim differently. I reject the Claimant's interpretation that s. 32(7) of the CCAA is a statutory exemption to the general rule and that to qualify, “the loss can be for anything that is broadly *in relation to* the disclaimer.” I do not consider the *Bryant* case applicable in these circumstances.
82. The Claimant has not established a basis to depart from the general rule in CCAA proceedings to the effect that unsecured creditors should not recover fees incurred after the filing date.
83. Accordingly, the claim for professional costs and expenses is denied.

DISPOSITION

84. The issues raised for determination in this proceeding were Thorneloe's allegations that, other than the components of the Claim previously allowed totalling \$1,922,860.93, two components of its Claim totalling \$11,650,000.00, the only components remaining outstanding, were improperly denied. Based on the materials filed and the applicable legal principles, for the reasons expressed herein, those allegations are hereby dismissed.

W. Niels Ortved, Q. Arb.

Date: September 8, 2022

TAB 7

CITATION: Laurentian University of Sudbury, 2021 ONSC 3272
COURT FILE NO.: CV-21-656040-00CL
DATE: 2021-05-07

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *D.J. Miller, Mitch W. Grossell, Andrew Hanrahan and Derek Harland*, for the Applicant

Ashley Taylor, Elizabeth Pillon and Ben Muller, for the Court-appointed Monitor Ernst & Young Inc

Vern W. DaRe, for the Firm Capital Corporation, the DIP Lender

Susan Philpott, Charles Sinclair and David Sworn, Insolvency Counsel for Laurentian University Faculty Association (LUFA)

Tracey Henry and Danielle Stampley, for Laurentian University Staff Union (LUSU)

Aryo Shalviri and Pamela Huff, for the Royal Bank of Canada

Andrew Hatnay, Demetrios Yiokaris and Sydney Edmonds and Eugene Meehan, Q.C., for Thorneloe University

Dylan Chochla and Stuart Brotman, for the Toronto Dominion Bank

André Claude, for the University of Sudbury

Donia Hashem, for the Canada Foundation for Innovation

Virginie Gauthier, for Lakehead University

George Benchetrit, for the Bank of Montreal

Joseph Bellissimo and Natalie Levine, for Huntington University

Gale Rubenstein and Bradley Wiffen, for the Financial Services Regulatory Authority

Sarah Godwin, for the Canadian Association of University Teachers

David Salter and Peter J. Osborne, for the Board of Governors

Rachel Moses, for Royal Trust

Mark G. Baker and Andre Luzhetskyy, for Laurentian University Students' General Association

Michelle Pottruff, for the Ministry of Colleges and Universities

Charlotte Servant-L'Heureux, for the Assemblée de la francophonie de l'Ontario

Linda Chen, for the Information and Privacy Commissioner of Ontario

HEARD: April 29, 2021

DECISION RELEASED: May 2, 2021

REASONS: May 7, 2021

ENDORSEMENT

[1] On Sunday, May 2, 2021, the following endorsement was released:

[1] Thorneloe University ("Thorneloe") brings this motion under section 32(2) of the *Companies' Creditors Arrangement Act* ("CCAA") for an order that the following two agreements in the Notice of Disclaimer of Laurentian University of Sudbury ("Laurentian") dated April 1, 2021 are not to be disclaimed or resiliated:

(a) the Federation Agreement between Laurentian and Thorneloe, dated 1962 (the "Federation Agreement"); and,

(b) the Financial Distribution Notice between Laurentian and Thorneloe dated May 1, 2019, amending the Proposed Grant Distribution and Services agreement between Laurentian, the University of Sudbury, Thorneloe University, and Huntington University dated November 10, 1993 (the "Financial Distribution Notice") (collectively, the "Agreements");

and, for an order amending the Loan Amendment Agreement dated April 20, 2021 (the "DIP Amendment Agreement"), to delete the following condition:

4. The Disclaimers of the Borrower's Federation Agreements and Financial Distribution Notices with each of Huntington

University, Thorneloe University and the University of Sudbury (collectively, the “Federated Universities”) issued on April 1, 2021 shall become effective, binding and final on May 1, 2021 (the “New Disclaimer Term”).

[2] This motion was heard via Zoom on April 29, 2021.

[3] The University of Sudbury also brought a motion pursuant to section 32(2) of the CCAA with respect to a Federation Agreement between Laurentian and the University of Sudbury. This motion was heard via Zoom on April 30, 2021 by Gilmore J.

[4] This endorsement is being released concurrently with the endorsement of Gilmore J.

[5] For reasons to follow, Thorneloe’s motion is dismissed.

[2] These are my reasons.

BACKGROUND

[3] In 1960, Thorneloe, Huntington University (“Huntington”), and the University of Sudbury (“U Sudbury”) (collectively, the “Federated Universities”), were established by the Anglican, United and Roman Catholic churches, respectively. As religiously affiliated institutions, they were not eligible for government funding. The Province of Ontario passed an *Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151, and Laurentian was established. On September 10, 1960, U Sudbury and Huntington entered into Federation Agreements with Laurentian and in 1962, Thorneloe entered into a Federation Agreement with Laurentian (collectively, the “Federation Agreements”).

[4] The Federated Universities agreed to suspend degree-granting authority (other than Theology, in the case of Thorneloe and Huntington) and effectively operate as a single university. The Federated Universities would teach courses to students for credit at Laurentian. Funding from the provincial government was provided to the Federated Universities, through Laurentian.

[5] The arrangement among the Federated Universities to distribute government grants is set out in the Proposed Grant Distribution and Services Fees Agreement dated November 10, 1993.

[6] The funding arrangement was changed commencing in the 2019 – 2020 academic year, per the Financial Distribution Notice.

[7] Laurentian wants to disclaim the Federation Agreements and the Financial Distribution Notice with respect to Thorneloe and U Sudbury.

[8] As referenced in the Third Report of the Monitor, the Federated Universities do not admit or register their own students, nor do they grant their own degrees (with the exception of Theology

at Huntington and Thorneloe). All Federated University programs and courses are offered through Laurentian, and all students apply for admission to Laurentian. Students who enroll in a program at Laurentian may take elective courses at any or all of the Federated Universities as well as Laurentian. Students enrolled in programs, courses, majors and minors that are administered by the Federated Universities are students of Laurentian, and these courses are credited towards a degree from Laurentian. Laurentian provides certain services to the Federated Universities, however, each of the Federated Universities is separately governed and manages its finances separately from Laurentian and each other.

[9] The Monitor also reported that as all students are students of Laurentian regardless of whether they are enrolled in programs or take courses at one of the Federated Universities, the Federated Universities do not directly bill or collect tuition. Laurentian manages admission. Students are billed tuition by Laurentian. Students then choose courses from a Laurentian course catalogue which includes courses offered through the Federated Universities.

[10] While Laurentian does not receive grant revenue or tuition revenue that is directly intended for the benefit of the Federated Universities, Laurentian and the Federated Universities have certain financial agreements in place pursuant to which Laurentian receives, allocates and distributes a portion of Laurentian's revenue to the Federated Universities in accordance with the funding formula (the "Federated Funding Formula"). Through this Federated Funding Formula, Laurentian compensates the Federated Universities for delivering programs and services to Laurentian students. The key terms of the Federated Funding Formula include the following:

- (a) A portion of provincial grants received by Laurentian are distributed to the Federated Universities based on the proportion of students enrolled in the Federated Universities' programs;
- (b) A portion of tuition fees received by Laurentian are distributed to the Federated Universities based upon student enrolment and courses offered through the Federated Universities; and
- (c) An offsetting charge for service fees charged by Laurentian to the Federated Universities in exchange for Laurentian providing certain support services to the Federated Universities (calculated as 15% of grant and tuition revenues distributed to the Federated Universities).

[11] As of the fall 2020 academic term, there were 417 students enrolled in full-time and part-time programs through the three Federated Universities (271 full-time equivalents). This includes 91 full-time and part-time students of Thorneloe (62.8 full-time equivalents), 108 full-time and part-time students at U Sudbury (69.6 full-time equivalents), and 163 full-time and part-time students at Huntington (103.2 full-time equivalents). The remaining students are enrolled in programs jointly offered by the Federated Universities.

[12] Students who enrolled at Laurentian have had the ability to take elective courses at any or all of the Federated Universities, as well as at Laurentian. The main activity of both U Sudbury

and Thorneloe is to offer elective courses through the Faculty of Arts for students enrolled in the Applicant's programs.

[13] Each of the Federation Agreements contains an aspirational statement which addresses the Federated relationship:

[B]oth Laurentian University and [the Federated University] declare and express the firm hope and conviction that the relationship between the Universities established by this agreement will be a permanent one... [a]nd to build a great institution of learning which shall forever be bilingual and nondenominational in its character.

[14] Laurentian has Indenture Agreements with each of the Federated Universities, pursuant to which the Federated Universities lease land owned by Laurentian and on which they have constructed their own buildings. Each indenture provides for lease terms of 99 years, with the possibility of further renewal.

[15] The indentures contain termination provisions which allow for the termination of the indenture if the relevant Federated University withdraws from the Federation with the Applicant. No notice of disclaimer was issued by Laurentian in respect of any of the indentures and the indentures are not the subject matter of this motion.

[16] Laurentian takes the position that the main activity of the Federated Universities is offering elective courses that are administered for Laurentian's students. Each time a Laurentian student takes an elective course through the Federated Universities, rather than an elective through Laurentian, that represents lost tuition revenue to Laurentian.

[17] Laurentian takes the position that in fiscal year 2020, as a result of Laurentian students' enrolment in programs and courses through the Federated Universities, Laurentian transferred to the Federated Universities approximately \$3.5 million in total grants, \$5.3 million in net tuition and \$0.3 million in material fees, for a total of \$9.1 million. That amount was offset by the administrative services fee of approximately \$1.4 million, for a net transfer from Laurentian to the Federated Universities of approximately \$7.7 million in fiscal year 2020.

[18] Laurentian has approximately 9,300 undergraduate and graduate students. Laurentian asserts that its Faculty of Arts has the ability and capacity to offer a range of alternative electives to its students, such that there is no need for Laurentian to lose revenue because its students take elective courses offered through the Federated Universities. Since students enrolled in programming offered by the Federated Universities can otherwise be accommodated and enrolled in programs offered by Laurentian, Laurentian asserts that a substantial portion of the grant revenue represents lost revenue for Laurentian. Laurentian and the Monitor concede that Laurentian will not be able to accommodate 100% of the displaced students but anticipate that it will be able to accommodate most of them.

[19] Laurentian also asserts that approximately 70% of its revenues in 2019-2020 is comprised of tuition and grant funding, and, due to the freeze of tuition fees, Laurentian cannot increase

revenue through tuition fees. Thus, the only opportunity for Laurentian to fully utilize the revenue it receives in respect of its students is for them to be enrolled in programs and courses at Laurentian.

[20] Thorneloe presents the facts from its viewpoint. It considers that the funds flow through Laurentian to Thorneloe pursuant to the Financial Distribution Notice. The funds do not belong to Laurentian and the funds do not represent a subsidy. As set out in the Financial Distribution Notice, Laurentian charges Thorneloe an additional 15% of Thorneloe's earned government grants and tuitions.

[21] Thorneloe also points out that it is a small component of the Laurentian Federation, employing a total workforce of 28, including seven full-time faculty members, 12 sessional faculty members, six staff and three casual staff.

[22] Notwithstanding its small size, Thorneloe contends that it has a big impact. In 2019-2020, Thorneloe taught 2861 Laurentian students, representing 297 full-time equivalents ("FTEs"). In 2020-2021, Thorneloe taught slightly fewer (2477) Laurentian students, after it made the decision to close underperforming programs.

[23] Thorneloe also contends that the financial problems of Laurentian are not attributable to Thorneloe or the Federation model.

CCAA PROCEEDINGS

[24] Laurentian obtained an initial stay of proceedings under the CCAA on February 1, 2021. The objective of the CCAA filing was the subject of comment in the affidavit of Dr. Robert Haché, sworn January 30, 2021, filed in support of the initial application. Section VIII covers the "Proposed Restructuring of Laurentian", the "Evaluation of the Federated Universities Model" and the "Restructuring of Program Offerings".

[25] Paragraph 295 of the affidavit reads as follows:

The Laurentian 2.0 framework seeks to accomplish the foregoing through:

- (a) **Restructuring the Academic Model** by streamlining academic programming and delivery through the reduction of number of programs, restructuring academic supports and terminating the agreements and relationship with the Federated Universities; and
- (b) **Restructuring the Business Model** by updating business operations, restructuring existing obligations through a compromise in the CCAA and ultimately balancing the budget.

[26] Paragraph 298 reads, in part, as follows:

[298] More particularly, during this CCAA proceeding, LU (“Laurentian”) intends to:

...

(b) re-evaluate the Federated Universities model in such a way that the historic significance of the Federated Universities can be preserved while ensuring that the relationships reflect the current realities of each organization;

[27] Paragraphs 299 – 301 read as follows:

[299] In 2019, LU provided notice of a change in the funding agreement between LU and each of the Federated Universities. While this amendment was necessary to make the funding arrangements consistent with metrics in respect of tuition and grants from the Province, further work is required. LU estimates that the Federated Universities model costs LU approximately \$5 million each year.

[300] Currently, the Federated Universities have duplicate organizational infrastructure, functions and services. Although LU respects the autonomy of the Federated Universities, the Federated Universities also have financial challenges. One successful outcome of this CCAA proceeding may be the remolding of the Federated Universities model in such a way that creates economies of efficiency for LU and the Federated Universities while maintaining the historical significance and identities of the Federated Universities.

[301] This Court-supervised proceeding will assist LU in focusing its discussions and negotiations with leadership of the Federated Universities to arrive at a compromise and solution that is acceptable and, more importantly, ensures the long-term sustainability of LU. If necessary, LU may utilize the proposed mediation to address and resolve the Federated Universities model.

[28] The Honourable Justice Sean Dunphy conducted a judicial mediation to address a number of issues facing Laurentian. Although the contents of any discussions have not been made public, it is apparent that the issues as between Laurentian and the Federated Universities were discussed but were not resolved.

[29] On April 1, 2021, Laurentian gave Notice to Disclaim or Resiliate an Agreement with Thorneloe and with U Sudbury. The notice covered both the Federation Agreements and the Financial Distribution Notice.

[30] The Monitor approved the Notices of Disclaimer.

[31] On April 15, 2021, Thorneloe delivered a Motion Record opposing the Notice of Disclaimer issued to Thorneloe.

[32] U Sudbury also delivered a Motion Record opposing the Notice of Disclaimer. The motion was the subject of a bilingual hearing before Gilmore J.

ISSUE

[33] Thorneloe submits there is one issue to be determined on this motion: should the court prohibit the disclaimer?

ANALYSIS

[34] Section 32 of the CCAA addresses the disclaimer or resiliation of agreements.

[35] The debtor company may, on notice to the other parties to an agreement and the monitor, disclaim or resiliate an agreement to which the company is a party at the commencement of the CCAA proceedings: s. 32(1). The monitor must approve the proposed disclaimer or resiliation. Otherwise, the debtor is required to make an application to the court for an order that the agreement be disclaimed or resiliated: ss. 32(1) and (3). The counterparty has 15 days to make an application to the court opposing the disclaimer or resiliation: s. 32(2). In deciding whether to make the order, the court is to consider, among other things, the factors set out in s. 32(4), which read as follows:

Factors to be considered

(4) In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed disclaimer or resiliation;
- (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
- (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

[36] Thorneloe makes the following arguments in opposition to the disclaimer:

- (a) Thorneloe did not cause Laurentian's financial problem;
- (b) The disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make an insolvency filing pursuant to the CCAA or the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

- (c) Thorneloe is immaterial to Laurentian's financial situation and therefore, the disclaimer would not result in a material improvement to Laurentian's restructuring;
- (d) The relationship between Laurentian and Thorneloe is not a commercial relationship to which the disclaimer provisions of the CCAA were intended to apply; and
- (e) Laurentian is acting in bad faith contrary to s. 18.6 of the CCAA.

[37] The Monitor approved the disclaimer for reasons set out in the Third Report as follows:

169. ... [I]t is the Monitor's view that the Notices of Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant. In fact, it is the Monitor's view that without the Notices of Disclaimer, the Applicant is unlikely to be able to complete a viable plan of compromise or arrangement.

...

172. While the net estimated savings achieved to date is significant and addresses the Applicant's operational deficit, it is unlikely to be sufficient to cover among other items: (a) the repayment of the DIP Facility (even if refinanced over time) and (b) payment of distributions to creditors pursuant to a plan of compromise or arrangement in connection with the compromise of their claims.

173. As a not-for-profit, LU is unable to issue equity to creditors. It has no or limited ability to service additional debt beyond the refinancing of the DIP. As set out above, LU has limited opportunity to drive increased revenue. Therefore, LU must, through its restructuring, generate sufficient savings to provide for the ability to make payments over time to its creditors in partial satisfaction of their claims. The savings generated to date through the LUFA Term Sheet, LUSU Term Sheet and non-union employee savings represent a significant component of the required savings, but not the entirety.

174. The Federated Universities model represents a significant cost to LU. In Fiscal 2020, LU transferred approximately \$7.7 million to the Federated Universities as a result of LU students taking programs and courses offered through the Federated Universities. This included the transfer of approximately \$3.5 million of grants received by LU, \$5.3 million in net tuition collected from LU students and \$0.3 million in material fees in respect of Federated Universities courses all offset by a 15% service fee of approximately \$1.4 million. ...

175. The Monitor understands that the majority of the funds transferred to the Federated Universities relates to the delivery by the Federated Universities of

elective courses taken by students enrolled in LU programs as opposed to students enrolled in programs offered through the Federated Universities.

176. In conducting its review of its academic offerings and operational restructuring model, LU determined that it has the ability and capacity to offer a comprehensive list of programs and courses to LU students from the suite of programs and courses delivered by LU faculty in the absence of continuing the Federated Universities relationship. As a result, LU determined that it could retain the vast majority of the funds transferred to the Federated Universities and continue to support students without incurring those incremental costs.

177. As a result, LU is of the view that savings estimated in the range of \$7.1 to \$7.3 million annually can be generated through the disclaimer of the Federated Universities as part of this restructuring.

178. The Monitor recognizes the potential financial hardship that the Notices of Disclaimer may have for the Federated Universities. However, given the additional savings required for LU to have a reasonable opportunity to put forward a viable plan of compromise or arrangement and effect a successful restructuring, the Monitor is of the view that the disclaimer of the Federated Universities agreements is necessary.

[38] To counter the submissions of Laurentian and the views and recommendations expressed by the Monitor, Thorneloe filed a Report on Financial Impact of Termination of Federated Agreement and Financial Distribution Agreement on Thorneloe University. The Report was prepared by Mr. Allan Nackan, a partner with A. Farber & Partners Inc. Mr. Nackan has been identified as an expert for the purposes of providing his opinion. I am satisfied that Mr. Nackan is an expert in the area of insolvency and restructuring. However, Mr. Nackan acknowledged in cross-examination that he is not an expert in terms of government funding of universities and that he has no prior experience in determining university funding. His lack of industry-specific experience has to be taken into account when considering his report and conclusions.

[39] It is also necessary to acknowledge the expertise of Ernst & Young Inc., the court-appointed Monitor. The Monitor is an officer of the court, with a duty to be neutral and objective: *Bell Canada International Inc. (Re)*, [2003] CarswellOnt No. 4537 (S.C.). The principals of Ernst & Young Inc., including Sharon Hamilton, who signed the Monitor's Third Report, are widely acknowledged as being experts in the field of insolvency and restructuring. Moreover, the Monitor has been involved since the proceedings began and has extensive knowledge of the Applicant's operations and restructuring efforts.

[40] Farber was retained to provide an opinion on whether the termination of the Federated Agreement and the Financial Distribution Notice would result in significant financial hardships to Thorneloe, and whether or not the termination would enhance Laurentian's prospects of a viable compromise or arrangement.

[41] Farber concludes the termination of the Federated Agreement will cause serious financial hardship to Thorneloe as a consequence of which Thorneloe will have to resort to a formal insolvency process.

[42] Farber also concludes that the termination of the Federated Agreement will have an immaterial impact on overall costs reduction in Laurentian's restructuring process and is unlikely to enhance prospects of Laurentian making a viable plan.

[43] In a supplementary report, Farber concludes that:

- Laurentian is not facing an immediate liquidity crisis on May 1, 2021;
- there is no compelling reason that would necessitate termination of the federated arrangement with Thorneloe on May 1, 2021;
- from a financial perspective, Laurentian and the DIP Lender have not provided information to support the need for a Disclaimer Deadline of May 1, 2021.

[44] A consideration of the s. 32(4) factors requires a balancing of interests. The subsection is silent with respect to the relative importance of any one of the factors to be considered and is not restricted to the listed factors. The test does, however, require the court to balance the benefit of the proposed disclaimer for Laurentian against the detrimental impact on Thorneloe. The disclaimer of a contract must be fair, appropriate and reasonable in all the circumstances. Ultimately, it is a discretionary decision to determine whether the disclaimer should be upheld. This discretion is exercised by weighing the competing interests and prejudice to the parties and assessing whether the disclaimer or resiliation is fair and reasonable.

[45] In my view, the considerations in the Third Report of the Monitor reflect a proper balancing of the competing interests of Laurentian and all stakeholders, including Thorneloe. The Third Report discusses the financial challenges facing Laurentian and proposes solutions that could enhance the prospects of a viable plan of compromise or arrangement, while acknowledging the potential financial hardship on the Federated Universities. The Farber Report and the Supplementary Farber Report focuses of the impact of the disclaimer on Thorneloe and the short term DIP Financing requirements. In narrowing its focus, the Farber Report does not take into account that in order to enhance the prospects of a viable plan of compromise or arrangement, it is often necessary to take into account the potential compromises that will have to be made by all stakeholder groups. For this reason, I have concluded that the Third Report of the Monitor has to be given greater weight than the Farber Report and the Supplementary Farber Report.

[46] Laurentian submits that the Courts have identified guiding principles for the analysis:

- (a) the recommendation of the Monitor is afforded significant weight in CCAA proceedings (see *Nortel Network Corp. Re*, 2018 ONSC 6257 at para. 27; *Aralez*

Pharmaceuticals Inc., Re, 2018 ONSC 6980 at para. 36; and *Aveos Fleet Performance Inc.*, 2012 QCCS 4074 at para. 50(f);

(b) the disclaimer does not need to be essential to the restructuring, it only need be advantageous and beneficial (see *Timminco Ltd., Re*, 2012 ONSC 4471 at para. 54 (“*Timminco*”); see also *Homberg Invest Inc.*, 2011 QCCS 6376 at para. 103);

(c) the threshold to establish “significant financial hardship” in opposing a disclaimer is high. There must be specific evidence of financial hardship. Mere loss or damage is not sufficient, and it must be likely that the hardship is caused by the disclaimer (see *Target Canada Co. Re*, 2015 ONSC 1028 at para. 26);

(d) the test to establish “significant financial hardship” is subjective and depends on an examination of the individual characteristics and circumstances of the counterparty (see *Timminco* at para. 60); and

(e) the Court should take into consideration the effect that the disclaimer will have on the outcome for all other unsecured creditors and be an equitable result that is dictated by the guiding principles of the CCAA (see *Timminco* at para. 62).

[47] There is no doubt that Laurentian has significant financial challenges. There is also no doubt that, if a successful restructuring is to be achieved, it must be done on an expedited basis. If Laurentian is to successfully restructure its affairs, it is essential that it maintain continuity of operations. The spring term commences May 3, 2021 and extends until the latter part of July 2021. The fall term commences at the beginning of September 2021. If the restructuring is to succeed, Laurentian must be in a position to provide assurances to both its students and faculty that it has a viable plan that will ensure continued operations for both the spring term, the fall term and beyond.

[48] Laurentian, with the assistance of the Monitor, identified a number of areas in which a financial restructuring was required. These include a downsizing of the number of programs being offered by Laurentian and also the necessity to arrive at new, sustainable collective agreements with LUFA and LUSA. These requirements and accommodations are set out in the motion to extend the stay of proceedings.

[49] Laurentian also identified, at the outset of the CCAA proceedings, that it would be necessary to have a fundamental readjustment or realignment with the Federated Universities.

[50] Although Thorneloe is of the view that its relationship with Laurentian has only a minor impact on the financial position of Laurentian, it seems to me that this view is far too narrow in scope. Laurentian has identified that if the disclaimers involving Thorneloe and U Sudbury are upheld, together with the revised agreement with Huntington, this will result in \$7.7 million of additional funds remaining with Laurentian on an annual basis. This calculation has been identified by the Monitor and, in my view, represents a real source of annual financial relief for Laurentian.

[51] Thorneloe counters by indicating that it is only one of three Federated Universities; the \$7.7 million figure cannot be attributed, in total, to Thorneloe. At first glance, this is an attractive

and persuasive argument. It does not, however, take into account that Huntington, in negotiating its settlement with Laurentian, has included what is known colloquially as a “most favoured nation” clause. Quite simply, if Thorneloe is able to negotiate a better alternative than the agreement negotiated by Huntington, Huntington is in a position to reopen negotiations with Laurentian to obtain similar treatment. Therefore, it seems to me that although there are three Federated Universities involved, their positions are interlinked and interrelated to such a degree that the \$7.7 million calculation is relevant to take into account on this motion.

[52] The Notices of Disclaimer are, in my view, central to the Applicant’s restructuring. The Disclaimer will result in millions of dollars of additional tuition and grant revenue remaining within Laurentian. As noted in both the affidavit of Dr. Haché and the Monitor’s Report, each time a Laurentian student takes an elective course offered through Thorneloe, revenue associated with that course is transferred from Laurentian to Thorneloe. Because the Applicant has the capacity to independently offer students the vast majority of all necessary programs and electives within its existing cost structure, each course taken by a Laurentian student through Thorneloe represents lost revenue for Laurentian.

[53] The Applicant contends that it simply cannot afford to continue its relationship with the Federated Universities. In order to right-size the University, Laurentian cannot continue paying for programs and courses supplied by the Federated Universities that it does not require and are revenue negative for Laurentian.

[54] The Applicant submits that it cannot simply “balance its budget” in order to achieve financial sustainability. It submits that it must generate positive cash flow from operations on an annual basis, prior to the funding of expenses, to achieve financial sustainability. In my view, this submission is consistent with the objective and necessity of achieving long-term sustainability.

[55] Laurentian has also submitted that the savings to be realized from the disclaimer are necessary for the purposes of submitting a viable plan. The Monitor is in agreement with this submission.

[56] Although the savings realized from the disclaimer do not, in isolation, represent a significant amount, in my view, that is not the end of the inquiry. In order to enhance the prospects of a viable plan of reorganization being put forward, it is necessary to assess the totality of what Laurentian is attempting to achieve in this restructuring.

[57] Laurentian suggests that savings have to be realized from a number of sources, including the Federated Universities. Without the total amount of savings being realized, Laurentian submits that it will be unable to put forward the basis of a plan that will be acceptable to its various constituents.

[58] It is necessary to take into account another factor, namely that there is evidence that Laurentian has achieved other milestones in its attempt to put forward a viable plan of reorganization. These include the revised relationships with LUFA and LUSA, the reduction in the number of courses, and the reduction in the number of staff. None of these milestones were realized without significant compromise and hardship being experienced by faculty, students and

the greater Sudbury community. Without such compromises, Laurentian will not be able to survive.

[59] It is also necessary to take into account the position of the DIP Lender. The DIP Lender has put forth a condition for its continued support and for increased financing. That condition is that the Disclaimer with respect to Thorneloe and U Sudbury had to be finalized by May 1, 2021, subject to any reserved decision of the court.

[60] Thorneloe challenges the position of the DIP Lender for two reasons. First, the condition relating to the Disclaimer was not a condition of the original DIP and was inserted only after the Notice of Disclaimer was issued. Second, the analysis performed by Farber indicates that the increased DIP Loan is not required until the latter part of June at the earliest.

[61] There is, in my view, no basis to question the legitimacy of the DIP Lender nor question the conditions that the DIP Lender has put forth with respect to any request to extend the DIP Loan and to increase the amount of the DIP Financing. The DIP Lender is entitled to take into account commercial reality in assessing its options.

[62] The DIP Lender is not a pre-existing lender to Laurentian, nor is there any evidence that the DIP Lender is engaged in a “loan to own strategy”. These facts distinguish this DIP Lender from a number of DIP lenders that have been involved in the cases referenced by counsel to Thorneloe, as referenced in Rostom and Fell, “Recent Trends in DIP Financing” (2016) 5-4 IIC Journal; *Essar Steel Algoma (Re)*, Endorsement of Newbould J. dated November 16, 2015; and *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1459.

[63] It is also relevant to remember that this is not a situation where the Court is being asked to approve DIP financing with this DIP Lender. These approvals were granted in February 2021 with no party objecting and with no appeals being filed. It was a competitive process and the DIP Lender was one of eight potential DIP lenders identified at the outset of the proceedings.

[64] Thorneloe also takes issue with respect to the reluctance of a representative of the DIP Lender to be cross-examined or to answer any questions with respect to the DIP Financing.

[65] In response, Laurentian takes the position that the terms for the continued DIP were negotiated as part of a process of achieving a viable long-term plan. Second, although the increased DIP may not be necessary until mid-June, it is a requirement for any extension of the stay to provide a cash flow statement that takes into account the entirety of the Stay Period, and it is necessary to provide the necessary assurances to faculty and students that Laurentian will be able to operate for the next academic term, which commences May 3, 2021 and extends towards the middle to the latter part of July 2021. It is simply not feasible, from its standpoint, to operate without the continued DIP Facility and the certainty that the DIP Facility will be available throughout the entirety of the academic term and the Stay Period.

[66] With respect to the cross-examination of the DIP Lender, I note that no affidavit has been filed in these proceedings by a representative of the DIP Lender. In addition, the DIP Lender is not a pre-existing lender. The DIP Lender is not involved in any of the pre-CCAA DIP contractual

relationships. It is up to the debtor, with the assistance of the Monitor, to negotiate the terms of the DIP Financing. There is no evidence that the DIP Lender has any ulterior motive in negotiating the condition to extend additional financing and to extend the term.

[67] Thorneloe also raises the concern that the Disclaimer will result in significant financial hardship for Thorneloe and result in Thorneloe having to make insolvency filings pursuant to the CCAA or the *Bankruptcy and Insolvency Act*.

[68] There is no doubt that this is a legitimate point being raised by Thorneloe. The impact of the disclaimer on Thorneloe is significant. The consequence of the disclaimer is such that Thorneloe will be unable to operate in its current form. However, Thorneloe was offered alternatives. The form of the Huntington Transition Agreement was offered to Thorneloe but was not accepted. More importantly, it is also necessary to take into account that if Laurentian's restructuring does not succeed and it ceases operations, Thorneloe, as conceded by its counsel, will also be unable to continue operations.

[69] Thorneloe also contests the disclaimers on the basis that the relationship between Laurentian and Thorneloe is not a commercial relationship to which the disclaimer provisions of the CCAA were intended to apply. In my view there is no merit to this submission. The CCAA proceedings were commenced on February 1, 2021. The Initial Order declares that Laurentian is insolvent and is a company to which the CCAA applies. The disclaimer provisions in s. 32 are available to a debtor company. The exceptions set out in s. 32(9) have no application in the circumstances. Laurentian is entitled to utilize the disclaimer provisions in accordance with s. 32.

[70] Thorneloe also takes the position that Laurentian is acting in bad faith contrary to s. 18.6 of the CCAA which provides:

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

Good faith – powers of court

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

[71] In support of this argument, Thorneloe points to Laurentian's attempt to terminate its relationship with Thorneloe, knowing that the disclaimer will result in Thorneloe's insolvency, and to Laurentian's persistence in the face of evidence that termination will not materially assist its restructuring. Thorneloe also submits that Laurentian has consistently and continually wanted to terminate its relationship with Thorneloe and thereby failed to engage in good faith negotiations.

[72] I do not accept that Laurentian has acted in bad faith. Restructurings are not easy and often result in treatment that a party can consider to be extremely harsh. However, that does not

necessarily mean that the other party has not been acting in good faith. In its Third Report, the Monitor makes specific reference to the bad faith argument being raised by Thorneloe. It is significant that the Monitor makes no statement that would suggest in any way that Laurentian has been acting in bad faith. The Monitor ultimately recommends at paragraph 206 of its Third Report that the court grant the relief sought by the Applicant, which includes the disclaimer and also an extension of the stay of proceedings.

[73] Section 11.02(3) of the CCAA addresses the burden of proof on an application for an extension of the stay of proceedings other than the initial application. This includes a requirement that the applicant satisfy the court that it has acted, and is acting, in good faith and with due diligence. By supporting the application for the extension and upholding the disclaimer, it can be inferred that the Monitor does not support the argument of Thorneloe to the effect that Laurentian has been acting in bad faith.

[74] My summary of the factors set out in s. 32(4) of the CCAA is as follows:

- (a) the Monitor approved the proposed disclaimer;
- (b) the Disclaimer will enhance the prospects of a viable compromise or arrangement being made in respect of Laurentian;
- (c) the Notice of Disclaimer will have financial consequences to Thorneloe, but this is not a sufficient reason to disallow the Notice of Disclaimer. Thorneloe was offered an alternative, similar to Huntington, which was not accepted.

[75] In addition, it seems to me that, in the circumstances of this case, it is necessary to consider the broader implication of disallowing the Notice of Disclaimer – namely the potential demise of Laurentian.

[76] The dilemma facing the court is clear. If Thorneloe's motion succeeds, with the result that the Disclaimer is not effective, it could lead to an unraveling of Laurentian's restructuring plan and the collapse of Laurentian. This in turn would have significant impact on all faculty, students and the greater Sudbury community. It would also result in the financial collapse of Thorneloe. Obviously, this is not a desirable outcome.

[77] If the Notices of Disclaimer are upheld, I acknowledge that this could lead to the cessation of operations of Thorneloe. I do not lightly discount the impact on faculty, employees and students at Thorneloe, but the impact is significantly less than if Laurentian and Thorneloe are both forced to suspend or cease operations.

[78] Given these two undesirable options, the better choice or to put it another way, the least undesirable choice, is to uphold the Notices of Disclaimer.

DISPOSITION

[79] In the result, the motion brought by Thorneloe to invalidate the Notice of Disclaimer is dismissed.



Chief Justice G.B. Morawetz

Date: May 7, 2021

TAB 8

Court File No. CV-21-00656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF

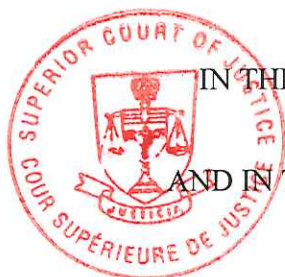
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FRIDAY, THE 5TH

JUSTICE MORAWETZ

)

DAY OF FEBRUARY, 2021



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

ORDER

(Re: Appointment of Mediator)

THIS APPLICATION, made by Laurentian University of Sudbury (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order appointing a mediator as an officer of the Court to act as a neutral third party, was heard this day by videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Notice of Application of the Applicant dated February 1, 2021, the affidavit of Dr. Robert Haché sworn January 30, 2021 and the Exhibits thereto (the "**Haché Initial Affidavit**") and the Report of Ernst & Young Inc. (the "**Monitor**") dated January 30, 2021 and on hearing the submissions of counsel for the Applicant, counsel for the Monitor and counsel for the Laurentian University Faculty Association ("**LUFA**").

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Notice of Case Conference is hereby abridged and validated so that this case conference is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Haché Initial Affidavit.

COURT-APPOINTED MEDIATOR

3. **THIS COURT ORDERS** that Justice Sean Dunphy is hereby appointed, as an officer of the Court and shall act as a neutral third party (the “**Court-Appointed Mediator**”) to assist the Applicant and its relevant stakeholders with the mediation of the following issues:

- (a) the review and restructuring of the Applicant’s existing academic programs;
- (b) the review and restructuring of the faculty necessary to deliver the Applicant’s restructured academic programs;
- (c) a new collective agreement between the Applicant and LUFA, including resolving all outstanding grievances;
- (d) the review and restructuring of the Applicant’s Federated Universities’ model;
- (e) the framework for the Applicant’s restructuring and future operations; and
- (f) any other matters that are referred to the Court-Appointed Mediator by the Applicant, the Monitor, the relevant stakeholders or this Court;

(together, the “**Mediation Objectives**”).

4. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

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- (a) adopt processes, procedures, and timelines which, in his discretion, he considers appropriate to facilitate an effective and efficient negotiation of the Mediation Objectives (the “**Mediation Process**”); and
- (b) consult with any appointed representative(s) of the parties relevant to the Mediation Objectives, the Monitor, the Applicant, and such creditors, stakeholders of the Applicant, and other persons the Court-Appointed Mediator considers appropriate.

5. **THIS COURT ORDERS** that the Monitor shall provide the Court-Appointed Mediator with such assistance as the Court-Appointed Mediator shall reasonably request.

6. **THIS COURT ORDERS** that the Mediation Confidentiality Protocol (the “**Protocol**”) attached hereto as Schedule “A” is hereby approved and that the entirety of the Mediation Process or anything reasonably incidental to the Mediation Process shall be subject to the Protocol.

7. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts reasonably necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the protections afforded to a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

9. **THIS COURT ORDERS** that the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings, including but not limited to individual matters referred specifically by the Court to the Court-Appointed Mediator for resolution.

10. **THIS COURT ORDERS** that the Court shall not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination

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and the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process.

GENERAL

11. **THIS COURT ORDERS** that the Applicant and the Monitor may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order, and is enforceable without any need for entry and filing.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 05:2021

PER / PAR:



CHIEF JUSTICE G.B. MORAWETZ

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SCHEDULE "A" to Proposed Form of Mediator Appointment Order

Court File No.: 21-CV-00656040-00CL

**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**

MEDIATION CONFIDENTIALITY PROTOCOL**1. THE PROCESS:**

Pursuant to the Court's Order (the "**Mediation Order**"), Justice Sean Dunphy was appointed as an officer of the Court and to act as a neutral third party (the "**Court-Appointed Mediator**") to assist the Applicant and stakeholders with a mediation of various issues in the Applicant's CCAA proceeding. The Mediation Order authorizes the Court-Appointed Mediator to adopt processes, procedures, and timelines that, in his discretion, are considered appropriate to facilitate an effective and efficient mediation. Further to that authority, this Mediation Confidentiality Protocol shall apply to all written and oral communications related to or arising out of the mediation undertaken pursuant to the Mediation Order (the "**Mediation**").

2. PARTY AND MONITOR CONFIDENTIALITY:

All written and oral communication at the Mediation shall be deemed to be without prejudice settlement discussions. For the purposes of this section, a Mediation communication shall also include all conduct, statements, discussion, promises, offers, views, opinions, admissions and communications for purposes of conducting, considering, initiating, continuing, or reconvening the Mediation together with the delivery and exchange of any documents in the course of the Mediation made by any party, their agents, employees, representatives, or other invitees, and by the Court-Appointed Mediator.

The parties and the Monitor acknowledge and agree that:

- a) the Mediation is a settlement negotiation;
- b) the Mediation is confidential and no stenographic, visual, or audio recordings shall be made;

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- c) no Mediation communication shall be discoverable, admissible or referred to in Court for any purpose, including impeachment in the action or in any other proceeding or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation, and shall not be discussed with anyone, provided that communications otherwise admissible or subject to discovery do not become inadmissible or protected from discovery or admission by reason of their use in Mediation;
- d) any notes, records, statements made, discussions had, and recollections of the Court-Appointed Mediator in conducting the Mediation shall be confidential and without prejudice and protected from disclosure for all purposes; and
- e) except as permitted by law, the parties will not subpoena or otherwise require the Court-Appointed Mediator to testify or produce the records or notes in an action or in any other proceeding.

3. MEDIATOR CONFIDENTIALITY:

During the Mediation process, the Court-Appointed Mediator may disclose to either party any information provided by either party, unless the disclosing party has specifically requested the Court-Appointed Mediator to keep the information confidential, in which case the Court-Appointed Mediator will attempt to keep that information in confidence.

The Court-Appointed Mediator will not disclose to anyone who is not a party to the Mediation anything said, or any materials submitted to the Court-Appointed Mediator, except:

- a) where applicable, to the lawyers or other professionals retained on behalf of the parties or to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the Court-Appointed Mediator;
- b) to the Court, to the extent specifically permitted in the Mediation Order; or
- c) where otherwise ordered to do so by a judicial authority or where required to do so by law.

Except as noted above, the notes, records, statements made, and recollections of the Court-Appointed Mediator shall be confidential and protected from disclosure for all purposes.

4. CONSENT TO THIS AGREEMENT:

Each party present during all or any part of the Mediation shall review this Mediation Confidentiality Protocol and agrees to proceed with the Mediation on the terms herein contained.

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-21-00656040-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(Appointment of Mediator)

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» **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

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF
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