Court File No. 08-CL-7878

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 UNIVERSAL SETTLEMENTS INTERNATIONAL INC.

TWENTY-SEVENTH REPORT OF THE MONITOR
January 30, 2018

INTRODUCTION

1. On December 2, 2008, Universal Settlements International Inc. ("**USI**" or the "**Company**") filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. C-36, as amended (the "**CCAA**") pursuant to provisions of an Order of this Court dated December 2, 2008 (the "**Initial Order**"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor (solely in its capacity as monitor and not in its personal or corporate capacity, the "**Monitor**") of the Company during these CCAA proceedings (the "**CCAA Proceedings**").

2. To date, the Monitor has filed twenty-six reports with this Court, which are available on the Monitor's website at www.ey.com/ca/universalsettlements (the "**Monitor's Website**"). Details of the background to the CCAA Proceedings are set out in the Twenty-Third Report of the Monitor dated March 24, 2015.

3. Pursuant to the terms of a court and creditor approved Amended Plan of Compromise and Arrangement dated June 16, 2009 (the "**2009 Plan**"), as amended by the Amendment to the Amended Plan of Compromise and Arrangement dated November 24, 2014 (the "**Plan Amendment**", and the 2009 Plan as amended by the Plan Amendment referred to herein as the "**Plan**"), all life insurance policies held by USI on behalf of its investors and all corporately owned policies, such policies being USI's only assets (collectively, the "**Policies**" and individually a "**Policy**"), were pooled and held by a trust created by the Declaration of Trust by USI dated July 17, 2009 (the "**Canadian Trust**"), and were held in a separate account (the "**Monitored Trust Account**") by USI, as trustee, for the benefit of all Creditors (as defined in the Plan).

4. Since implementation of the Plan in July 2009 and pursuant to the explicit terms of the Plan, the role of the Monitor has been limited to monitoring the transactions giving rise to the receipts and disbursements in and out of the Monitored Trust Account, as well as monitoring the implementation of the Plan by USI, including distributions to Creditors thereunder. When the 2009 Plan was amended by the Plan Amendment in November 2014, the role of the Monitor was temporarily expanded to include the conduct of the Court-approved sale and investor solicitation process in respect of the Policies (the "**SISP**").

5. Pursuant to the Plan Amendment and the SISP, and as described further below, USI, as trustee, sold the Policies held as of April 2015 (the "**Purchased Policies**") to Vida Capital, Inc. ("**Vida**") pursuant to an asset sale agreement dated March 23, 2015 (the "**APA**"). The sale to Vida (the "**Vida Transaction**") closed on April 10, 2015.

6. As part of the APA, USI, as trustee, is required to withhold a reserve of at least 25% of the cash payment (the "**Vida Tax Reserve**") to fund any taxes that may be payable by virtue of the sale of the Purchased Policies. The Vida Tax Reserve cannot be distributed to the Plan Beneficiaries until (i) there has been a final determination by Canada Revenue Agency (the "**CRA**") of the amount of any taxes payable (including any taxes (other than transfer taxes (as defined in the APA)) payable by Vida by virtue of the sale of the Purchased Policies under the APA) and such amount, if any, has been paid out of the Vida Tax Reserve to the Receiver General of Canada, or (ii) a compliance or clearance certificate has been obtained from CRA under the *Income Tax Act* (Canada).

7. The Vida Tax Reserve is not the only tax reserve to which the Monitored Trust Account is subject. As discussed in detail in the Twenty-Sixth Report of the Monitor, dated September 2, 2016 (the "**Twenty-Sixth Report**"), a final distribution to Creditors cannot be made without some resolution of taxes owing, or required to be withheld by, USI as trustee of the Canadian Trust.

8. The tax issues described above have, to date, prevented USI from making a full distribution of funds currently held in the Monitored Trust Account to Creditors. However, in December 2015, USI declared that an interim distribution would be made to Creditors in accordance with the terms and conditions of the Plan, which interim distribution was made on April 1, 2016 (the "**First Interim Distribution**"). Amounts for potential non-resident withholding taxes were deducted from payments to non-resident purchasers of their share of the First Interim Distribution and are being held by USI in a distribution account (the "**Purchaser Pool Account**"). The First Interim Distribution also held back the Vida Tax Reserve.

9. After further consultation with the Monitor, a second interim distribution was made November 30, 2016, which distribution was subject to holdbacks for unresolved tax issues.

10. The total distribution of approximately US$13,872,000 has been made to Creditors in accordance with the Plan, and approximately $23,092,000 as at December 31, 2017 remains in the Monitored Trust Account and the Purchaser Pool Account subject to the tax reserves and Reserve for Costs. In addition, pursuant to the order dated October 24, 2017 (the "**Cajubi Order**"), the equivalent tax reserve amount of Caja Paraguay de Jubilaciones y Pensiones del Personal de Itaipu Binacional's ("**Cajubi**") in the amount of US$1,321,537 is to be held in escrow by Cajubi's counsel.

11. The Monitor has been advised that USI and the CRA have reached a confidential audit agreement (the "**Audit Agreement**") that, if executed, will result in USI being able to make a final distribution to Creditors without the need for any holdback or withholding taxes. USI is now seeking to approve the entering into of the Audit Agreement with the CRA, on a confidential basis. The Monitor supports the approval of this Audit Agreement for the reasons set out herein.

12. The Monitor understands that USI will bring a motion returnable on February 14, 2018 to approve a final distribution to Creditors subject to certain conditions being satisfied.

PURPOSE OF THIS REPORT

13. This twenty-seventh report (the "**Twenty-Seventh Report**") provides:

    (a) The Monitor's understanding of the effect of the Audit Agreement and related CRA documents, and its reasons for recommending the Court approval thereof.

14. The Monitor will prepare and file a supplement to this Twenty-Seventh Report, to be served and filed in connection with USI's motion to make a final distribution (among other things) returnable on February 14, 2018, which will include:

(a) An update on the activities and correspondence of USI and the Monitor since the Twenty-Sixth Report;

(b) The Monitor's opinion regarding the final distribution of proceeds out of the Canadian Trust to Creditors;

(c) An update on unclaimed funds, and a protocol for handling such funds;

(d) An update on the outstanding claims in the Claims Process; and

(e) An update on the receipts and disbursements in the Monitored Trust Account, including fees and expenses.

TERMS OF REFERENCE

15. In preparing this Twenty-Seventh Report and making the comments herein, the Monitor has been provided with, and has relied upon certain unaudited, draft and/or internal financial information, the Company's books and records, discussions with management of USI ("**Management**") and information from other third-party sources (collectively, the "**Information**"). Except as described in this Twenty-Seventh Report:

(a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the

Monitor expresses no opinion or other form of assurance in respect of the Information.

(b) The Monitor has prepared this Report in its capacity as a court-appointed officer solely for the use of the Court and has made a copy of this Report available on the Monitor's Website solely for purposes of providing an update to the Court and Creditors. This Report should not be used or relied upon by any other person or for any other purpose.

(c) Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

17. Capitalized terms used in this Report and not otherwise defined shall have the definitions given to them in the Plan.

CRA AUDIT AGREEMENT

18. As set out in further detail in the affidavit of Chris Halas, sworn January 29, 2018 (the "**Halas Affidavit**"), USI and the CRA have been engaged in audit discussions during the period between February 2016 and December 2017. Throughout the course of the audit, USI worked together with its accountant to provide CRA with the information it requested.

Due to the atypical nature of the USI business and the additional complexity of the CCAA filing and the Plan, the audit took many months.

19. The Monitor was not directly involved with the audit process, but USI and its counsel provided periodic updates on the status and timing of the audit process, CRA's position with respect to the Canadian Trust transactions and the likely outcome and impact of the audit. As the Monitor's role in this proceeding is limited to supervision of receipts and disbursements from the Monitored Trust Account and because the audit addressed matters not related to the Canadian Trust, it has not had any material direct contact with CRA with respect to the audit process. Accordingly, the Monitor's knowledge about and contact with CRA is primarily derived through USI and its advisors.

20. In addition, counsel for the largest Creditor, Cajubi, has been periodically updated on the status of the audit.

21. The Monitor has emphasized to USI throughout the process that the end result of the audit must be to satisfy the criteria in the APA regarding the Vida Tax Reserve, as well as clarifying liabilities with respect to the withholding tax and other tax issues regarding distributions from the Monitored Trust Account so that a final distribution to Creditors could be effected in a timely manner.

22. As discussed in further detail in the Halas Affidavit, the CRA audit of USI covered the period May 1, 2005 to April 30, 2016, and included financial information confidential to USI subsequent to the implementation of the 2009 Plan.

23. On or about December 19, 2017, the Monitor was advised that the CRA audit was concluded and the CRA and USI had negotiated and settled the terms of the Audit Agreement, subject to USI obtaining Court approval. CRA also provided USI with its response to issues raised by USI concerning the tax treatment of USI and non-resident creditors under the Plan, and the availability of clearance certificate(s) and a comfort letter related to the sale to Vida.

24. With the CRA's consent, the Monitor has been provided with a copy of the Audit Agreement and related documents on a confidential basis.

25. Due to its confidentiality undertaking, the Monitor cannot disclose the terms of the Audit Agreement.

26. Based on its review of the terms of the Audit Agreement and related documents and advice received from USI, the Monitor understands that USI is not expecting CRA to solely assess the Canadian Trust for withholding and other taxes, and that the relevant transactions regarding the Policies were all assessed as part of the audit and are encompassed in the resolution with the CRA culminating in the Audit Agreement and related documents. The Monitor understands that this would render the characterization of the Canadian Trust as a bare trust or a true trust irrelevant from a tax perspective. Moreover, the Monitor also understands that the Audit Agreement and related documents would provide for the CRA to issue a clearance certificate and comfort letter sufficient to release the Vida Tax Reserve.

27. Accordingly, the Monitor understands that if the Audit Agreement is entered into, USI will be in a position to make a final distribution to Creditors without deducting or reserving for any tax liability or withholding any taxes. This would be the optimal result for USI and its

Creditors, and on that basis the Monitor supports USI's motion for the approval of the Audit Agreement.

28. The Monitor understands that approval of the Audit Agreement is required on an urgent basis to ensure that the Audit Agreement can be executed and recorded with the CRA before existing systems are changed over to new systems which would delay processing the changes required to implement the Audit Agreement in a timely manner. Given the short timeline, only the approval of the Audit Agreement, and not the corresponding final distribution, is being sought at this time.

29. The Monitor understands that USI has booked February 14, 2018 for the return of a motion seeking, among other things, Court approval of a final distribution to Creditors (subject to certain conditions being satisfied, including the acquisition of a clearance certificate and comfort letter from the CRA, which the Monitor understands will be issued as soon as the CRA is able). The Monitor will file a supplement to this Twenty-Seventh Report to provide its observations and recommendations regarding that distribution motion, however the Monitor notes that its support for the approval of the Audit Agreement is based on its understanding that the Audit Agreement and related documents will enable a final distribution with no tax liability, including no withholding taxes, required to be withheld or remitted by USI.

CONCLUSIONS AND RECOMMENDATIONS

30. For the reasons set out in this Twenty-Seventh Report, the Monitor has concluded that the Audit Agreement is in the best interest of USI and its Creditors, and accordingly the Monitor recommends that this Court grant USI's motion and approve the Audit Agreement.

31. Given the terms of the Audit Agreement, including the confidentiality thereof, the Monitor concludes that the requested sealing order is reasonable and recommends that this Court grant it.

ALL OF WHICH is respectfully submitted this 30th day of January 2018.

ERNST & YOUNG INC., Court-appointed Monitor of Universal Settlements International Inc. and not in its personal or corporate capacity

Brian Denega
Senior Vice-President