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.

(the "Applicant")

FACTUM
(*re* Sanction Order)

June 19, 2009

OGILVY RENAULT LLP
Royal Bank Plaza, South Tower
3800 - 200 Bay Street
Toronto, Ontario M5J 2Z4

William McNamara (LSUC#: 23153S)
Tel: (416) 216-3906
Fax: (416) 216-3930

Lawyers for Universal Settlements International Inc.

PART I – INTRODUCTION

1. Universal Settlements International Inc. (the "Company") seeks this Honourable Court's sanction of the amended plan of compromise and arrangement dated June 16, 2009 (the "Plan") pursuant to section 6 of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "CCAA"), together with certain ancillary relief to give effect to the terms of the Plan.

2. On June 17, 2009, the Plan was approved overwhelmingly by creditors present in person or by proxy at the meetings of creditors conducted for the Company.

PART II – THE FACTS

A. BACKGROUND

3. On December 2, 2008, pursuant to the order (the "Initial Order") of the Honourable Mr. Justice Siegel of the Superior Court of Justice (Commercial List) (the "Court"), the Company was granted protection under the CCAA and Ernst & Young Inc. was appointed by the Court as Monitor (the "Monitor").

> Initial Order dated December 2, 2008 (the "Initial Order"), Affidavit of Christopher Halas sworn June 19, 2009 ("Halas Affidavit") at para. 4, Motion Record of the Company (the "Record"), Tab 2, p. 52 and Tab 2A, pp.62 to 75.

4. The Initial Order granted the Company a stay of proceedings (the "Stay") until December 31, 2008. The Stay has been extended until July 3, 2009 pursuant to subsequent Orders made in these proceedings.

> Initial Order, para. 10, Halas Affidavit, para. 4, Record, Tab 2, p. 52 and Tab 2A, p. 65.

5. By order made May 15, 2009, the Court accepted the Plan for filing and gave directions for the holding of meetings of creditors on June 17, 2009 to consider and, if deemed advisable, approve the Plan. Terms which are not otherwise defined herein will have the meaning as defined in the Plan.

> Meeting Order dated May 15, 2009, Halas Affidavit, para. 6, Record, Tab 2, p. 53 and Tab 2C, pp. 109-156.

B. THE MEETINGS

6. On June 17, 2009, two meetings of Creditors were conducted in Toronto, Ontario (the "Meetings"). The purpose of these meetings was to have the Creditors consider and vote on resolutions seeking the approval of the Plan, as amended.

> Halas Affidavit, para. 11, Record, Tab 2, p. 55.

7. Prior to the Meetings, the Plan was amended in certain areas. These amendments were not extensive, and were mainly to (i) provide for the settlement and payment of a solicitor's lien asserted by Borden Ladner Gervais LLP, and (ii) provide for a Creditors' Committee to consult with the Company with respect to the conduct of the Actions.

> Halas Affidavit, para. 12, Record, Tab 2, p. 55.

8. By a letter posted on the Monitor's website on June 15, 2009, Creditors were advised that certain amendments to the Plan (as previously circulated) would be made. The amended Plan, and a blacklined version of the amended Plan, was (i) posted on the Monitor's website on June 16, 2009, and (ii) included in materials distributed to Creditors at the Meetings.

> Halas Affidavit, para. 13, Record, Tab 2, p. 55.

9. The Meetings were chaired by the Monitor and were attended by representatives of the Company. Prior to the commencement of voting, the Monitor confirmed that each Meeting had a quorum of more than one Creditor present in person or by proxy. Details regarding the votes cast by creditors present in person or by proxy at the Meetings are set out below:

Percentage of Ordinary Creditors Present in Person or by Proxy voting in favour of the plan	87.5% (7 of 8)
Percentage Value of Claims Held by Ordinary Creditors Present in Person or by Proxy voting in favour of the plan	99.3%
Percentage of Purchaser Class of Creditors Present in Person or by Proxy voting in favour of the plan	98.6% (2177 of 2209)
Percentage Value of Claims Held by Purchaser Class of Creditors Present in Person or by Proxy voting in favour of the plan	99.1%

Halas Affidavit, para. 14, Record, Tab 2, p. 55.

The Ninth Report of the Monitor dated June 19, 2009 (the "Ninth Report").

10. At the Meetings, the Creditors present in person or by proxy voted overwhelmingly in favour of the resolutions to approve the Plan. The Plan was thus supported by a majority of Creditors present in person or by proxy who held significantly more than two-thirds in value of all proven unsecured claims, in each class of Creditors.

Halas Affidavit, para. 15, Record, Tab 2, p. 55.

C. THE PLAN

11. The Company developed the Plan as a considered and fair compromise of Creditor claims that will stabilize the Company and permit it to exit from CCAA protection, and that will return to creditors more than the Creditors would receive in a liquidation scenario.

Halas Affidavit, para. 20-34, Record, Tab 2, pp. 56-61.

12. The material terms of the Plan are summarized in the Affidavit of Christopher Halas sworn on May 5, 2009 in this proceeding.

13. The Company believes that the Plan is fair and equitable in the circumstances and that, overall, the Plan will produce a result favourable for the Company's Creditors and stakeholders because:

(a) It will avoid a liquidation sale of the Company's portfolio of Policies which would generate an amount significantly less that the amount the Plan will return to the Creditors;

(b) It will ensure that Purchasers are treated equally and are repaid their original investments with the possibility of an additional investment return;

(c) It will avoid disputes and litigation with respect to possible ownership interests that Purchasers may assert over the Policies and, therefore, avoid the associated expenses which would deplete the amount of money available to Creditors;

(d) It will allow USI's present management and staff who have managed the USI portfolio since its inception, to continue to manage the processing of premiums, the tracking of insured's lives, and the processing of claims; and

(e) It will permit USI to continue with the Actions, from which it expects to receive a substantial recovery in which Purchasers will share.

Halas Affidavit, para. 20-34, Record, Tab 2, pp. 56-61.

Ninth Report.

14. The Monitor stated in its Seventh Report dated May 7, 2009 that "the Plan offers Purchasers and Ordinary Creditors collectively a better structure to balance their respective interests, mitigate their risks and pursue an optimal overall recovery of value than does an immediate liquidation or piecemeal distribution".

Seventh Report of the Monitor dated May 7, 2009, para. 188.

PART III – ISSUES AND THE LAW

A. THE PLAN

15. The Court may sanction a plan of arrangement if a majority in number representing two-thirds in value of each class of creditors votes in favour of the plan.

CCAA, Section 6.

16. In addition, for a plan of arrangement or compromise to be sanctioned by the Court under the CCAA:

(a) There must be strict compliance with all statutory requirements and adherence to previous orders of the Court;

(b) Nothing can have been done or be purported to have been done that is not authorized by the CCAA; and

(c) The plan must be fair and reasonable.

Algoma Steel Inc. (Re) (2002), 30 C.B.R. (4th) 1 at para. 2 (Ont. S.C. [Commercial List]), Brief of Authorities of the Company ("Brief"), Tab 1.

17. The Company and the Monitor have complied with the CCAA and all orders of this Honourable Court. In this regard it should be noted that:

(a) The Meeting was properly constituted and conducted;

(b) The voting was properly carried out under the supervision of the Monitor; and

(c) The Plan was approved by the requisite double majority of each class of Creditors designated by the Plan.

Ninth Report.

18. Nothing has been done and no steps have been taken that were not authorized by the CCAA and the Orders of this Honourable Court.

19. The Plan provides for the release of claims against directors of the Company as well as against employees of the Company, Persons who may claim contribution or indemnification against or from the Company, Agents (as defined in the Plan), the Monitor, and certain professional advisors. Although the release of third parties is not specifically authorized by section 5.1 of the CCAA, such a release can be approved by the Court as part of a plan in appropriate circumstances. The CCAA "permits third-party releases that are reasonably related to the restructuring at issue because they are encompassed in the comprehensive terms 'comprise' and 'arrangement' and because of the double-voting majority and court sanctioning statutory mechanism that makes them binding on unwilling creditors". (*ATB*, *infra*, at para. 78)

> *Canadian Airlines Corp. (Re)* (2000), 20 C.B.R. (4th) 1 at paras. 86-92 (Alta. Q.B.) ("*Canadian Airlines*"), Brief, Tab 2.
>
> *ATB Financial* v. *Metcalfe & Mansfield Alternative Investments II Corp.* (2008) 45 C.B.R. (5th) 163 (Ont. C.A.) ("*ATB*"), Brief, Tab 3.

20. The Plan is fair and reasonable as the rights of stakeholders are being fairly compromised in order to balance the interests of all parties. Fairness and reasonableness should be measured against the "available commercial alternatives", not against a standard of perfection.

> *Canadian Airlines*, ibid, at para. 178-179, Brief, Tab 2.
>
> Seventh Report of the Monitor dated May 7, 2009.

21. The Courts have recognized that in a restructuring, "almost everyone loses something". In considering whether a Plan is fair and reasonable, the Court must consider a balancing of prejudices.

> In insolvency restructuring proceedings almost everyone loses something. To the extent that creditors are required to compromise their claims, it can always be proclaimed that their rights are being unfairly confiscated and that they are being called upon to make the equivalent of a further financial contribution to the compromise or arrangement. Judges have observed on a number of occasions that CCAA proceedings involve "a balancing of prejudices," inasmuch as everyone is adversely affected in some fashion.
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> *ATB*, *ibid*, at para. 117, Brief, Tab 3.

22. The Court should recognize that the creditors themselves know best what is in their interests, and the Court should not substitute its business judgment for the business judgment of the participants, as to what is a fair and reasonable compromise and arrangement. One important measure of whether a plan is fair and reasonable is the parties' approval of the plan, and the degree to which approval has been given.

> *Olympia & York Developments Limited (Re)* (1993), 12 O.R. (3d) 500 at p. 510 (Ont. Gen. Div.), Brief, Tab 4.

PART IV – ORDER REQUESTED

23. The Company requests a sanction order in the form of the draft order contained in the motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2009.

per

WILLIAM McNAMARA
OGILVY RENAULT LLP

Lawyers for Universal Settlements International Inc.

SCHEDULE 1

LIST OF AUTHORITIES

1	*Algoma Steel Inc. (Re)* (2002), 30 C.B.R. (4th) 1 (Ont. S.C. [Commercial List])
2	*Canadian Airlines Corp. (Re)* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.)
3	*ATB Financial* v. *Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (Ont. C.A.)
4	*Olympia & York Developments Limited (Re)* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.)

SCHEDULE 2

RELEVANT STATUTE

***Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, section 6**

Compromises to be sanctioned by court

6. Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

R.S., 1985, c. C-36, s. 6; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 123; 2004, c. 25, s. 94.