

**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**

**EIGHTH REPORT OF THE MONITOR
September 28, 2021**

INTRODUCTION

1. On February 1, 2021, Laurentian University of Sudbury (“**LU**” or the “**Applicant**”) brought an application (the “**CCAA Application**”) before this Court seeking an initial order pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) to, among other things, obtain a stay of proceedings to allow the Applicant an opportunity to financially and operationally restructure itself.
2. On February 1, 2021, the Court granted an initial order (the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the “**Monitor**”), and approved a stay of proceedings for the initial 10-day period (the “**Stay Period**”) and certain Court ordered super-priority charges.
3. On February 5, 2021, the Court issued an order (the “**Mediator Appointment Order**”) appointing the Honourable Justice Sean F. Dunphy as mediator (the “**Court-Appointed Mediator**”) to oversee and mediate certain negotiations within the restructuring.
4. On February 10, 2021, the Court held a comeback hearing, which resulted in the issuance of an amended and restated initial order (the “**Amended and Restated Initial Order**”) which, among other things, approved debtor-in-possession interim financing in the amount of \$25 million (the “**DIP Facility**”) and extended the stay of proceedings to April 30, 2021.
5. On April 29, 2021, the Court granted a stay extension order (the “**Stay Extension Order**”) which, among other things, approved an increase in the DIP Facility to a maximum

principal amount of \$35 million (the “**Amended DIP Facility**”) and extended the stay of proceedings to August 31, 2021.

6. On May 31, 2021, the Court granted a claims process order (as amended and restated from time to time, the “**Claims Process Order**”) which, among other things, established a process whereby the Monitor, in conjunction with the Applicant, would (a) call for certain claims of creditors and establish bar dates by which such claims must be filed, (b) determine Claims (as defined in the Claims Process Order) for voting and distribution purposes in relation to a plan of compromise or arrangement to be presented by the Applicant at a future date (the “**Plan**”), and (c) develop a process for dealing with compensation claims, including establishing a methodology for calculating the compensation claims (the “**Claims Process**”).
7. On August 17, 2021, the Court granted an order (the “**Compensation Claims Process Order**”) approving the methodology to calculate Compensation Claims, other than Third Party RHBP Claims, (as those terms are defined in the Compensation Claims Process Order) and a process for notification and claims processing to determine Compensation Claims for voting and distribution purposes in relation to a Plan.
8. On August 27, 2021, the Court granted an Order (a) extending the stay of proceedings to January 31, 2022; and (b) approving an amendment to the Amended DIP Facility which, among other things, extended the Maturity Date (as defined in the Amended DIP Facility) to January 31, 2022.

PURPOSE

9. The purpose of this Eighth Report of the Monitor (the “**Eighth Report**”) is to provide information to the Court on:
 - a. Certain amendments to the Compensation Claims Process Order to incorporate an agreed methodology for calculating Compensation Claims in respect of Third Party RHBP Claims as well as the Monitor’s recommendations in respect of the same; and
 - b. A separate application for an interpretation of section 10 of the *Auditor General Act* (the “**AG Act**”) that the Monitor understands will be brought by the Auditor General of Ontario.

TERMS OF REFERENCE AND DISCLAIMER

10. In preparing this Eighth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant and discussions with senior management of the Applicant (“**Management**”) (collectively, the “**Information**”).
11. Unless otherwise indicated, the Monitor’s understanding of factual matters expressed in this Eighth Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
12. Capitalized terms not defined in this Eighth Report are as defined in the Pre-Filing Report of the Proposed Monitor, prior reports of the Monitor, the Amended and Restated Initial Order and other orders granted in the CCAA proceedings, as applicable.
13. On August 12, 2021, the Monitor issued its Sixth Report outlining the proposed Compensation Claims Process methodology. This Eighth Report should be read in conjunction with the Sixth Report and the information provided therein.
14. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

15. On March 28, 1960, LU was incorporated under *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the “**Laurentian Act**”).
16. LU is a non-share capital corporation and a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c.1 (the “**Income Tax Act**”). Pursuant to Section 149 of the Income Tax Act, LU is exempt from the payment of income tax because of its status as a registered charity. As a registered charity, LU also receives donations and issues tax receipts to donors.
17. LU is a publicly funded, bilingual and tricultural post-secondary institution. Its operations are located in the City of Greater Sudbury, Ontario. LU has consistently been one of the largest employers in Sudbury.
18. As described in prior Reports of the Monitor, the governance structure of LU is bi-cameral. It has a Board of Governors (the “**Board**”) and a Senate (the “**Senate**”), both of which derive their powers from the Laurentian Act. The Board, and the President and Vice-Chancellor generally have powers over the operational and financial management of LU, whereas the Senate is responsible for decisions in respect of educational policy at LU.

19. Prior to this CCAA proceeding, LU had relationships with certain independent federated universities, including the University of Sudbury (“**SU**”), the University of Thorneloe (“**Thorneloe**”) and Huntington University (“**Huntington**”) (collectively, the “**Former Federated Universities**”). On April 1, 2021, LU delivered Notices to Disclaim or Resiliate to each of the Former Federated Universities pursuant to section 32 of the CCAA (the “**Notices of Disclaimer**”). The Notices of Disclaimer became effective on May 2, 2021.
20. Further background information with respect to the Applicant is described in the Pre-Filing Report and prior Reports of the Monitor.

THIRD PARTY RHBP CLAIMS

21. As set out above, the Court approved the Compensation Claims Process Order on August 17, 2021. At that time, it was agreed that as a result of ongoing discussions among LU, the Monitor and certain entities whose current or former employees participated in the Retiree Health Benefits Plan (the “**RHBP**”), including Huntington, Thorneloe, SU, the Sudbury Neutrino Observatory Laboratory, Mining Innovation Rehabilitation and Applied Research Corporation and Centre for Excellence in Mining Innovation (each a “Third Party” and collectively, the “**Third Parties**”), the methodology, deadlines and procedures in respect of Third Party RHBP Claims would be governed by a subsequent order of the Court.
22. Following approval of the Compensation Claims Process Order, LU, the Monitor and the Third Parties commenced discussions regarding a potential resolution of a Third Party RHBP Claim methodology and agreed to a litigation schedule for the hearing of a motion should a consensual resolution not be reached.
23. On September 10, 2021, in order to adhere to the litigation schedule, LU served its motion record in respect of the Third Party RHBP Claims matter seeking a Compensation Claim calculation methodology for determining Third Party RHBP Claims substantially similar to the methodology described in the Monitor’s Sixth Report.
24. Subsequently, LU, the Monitor and the Third Parties continued to engage in further discussions. The filing of responding materials by the Third Parties was delayed due to the progression made in the negotiations. These discussions ultimately concluded in an agreement among LU and the Third Parties with respect to certain amendments to the Compensation Claims Process Order to reflect an agreed calculation methodology, as follows:
 - a. Third Parties will receive a Compensation Claim on behalf of their current or former employees (including retirees) relating to the participation of their current or former employees in the RHBP (the “**Third Party RHBP Claim**”);

- b. Third Party RHBP Claims in respect of a current or former employee (including retirees) of the Third Parties may only be made by a Third Party on behalf of its current or former employees. Third Party current or former employees (including retirees) shall not be entitled to assert a Third Party RHBP Claim against LU directly;
- c. The Third Party RHBP Claim shall be in an amount that is the greater of:
 - i. the total amount of RHBP contributions received by LU from the Third Party and on behalf of the Third Party's employees during the administration of the RHBP, net of any contributions refunded by LU to the Third Party;

Less

The aggregate amount of RHBP benefits paid to the Third Party retirees or surviving spouses on or prior to the Filing Date; and
 - ii. The aggregate amount of all RHBP Claims calculated in respect of the Third Party's current or former employees calculated in accordance with the methodology previously approved by this Court for employees of LU;
- d. The quantification of the RHBP Claims calculated in respect of the Third Party's current or former employees (including retirees) shall be calculated using the same methodology utilized for LU current or former employees, including the threshold determination of eligibility for RHBP participants of a minimum of 15 years of contributions to the RHBP and being at least 55 years of age as at April 30, 2021. The process for establishing the Third Party RHBP Claims will also follow the format in the earlier order, with the Monitor preparing Statements of Compensation Claims at first instance, with the Third Parties then having an opportunity to file Notices of Dispute, if required;
- e. In order to assist the Monitor in preparing the Statements of Compensation Claims for the Third Parties, each of the Third Parties shall forthwith, and no later than seven calendar days following written request from the Monitor: (a) inform the Monitor of all Third Party current and former employees on behalf of which the Third Party may be entitled to assert a Third Party Claim; and (b) to the extent available to the Third Party, provide the Monitor with the Compensation Claim Information (as defined in the Compensation Claims Process Order) to calculate the Third Party RHBP Claims;
- f. Upon receipt of their respective Statement of Compensation Claim, each Third Party shall notify, in writing, their Third Party current and former employees

(including retirees) of the potential Third Party RHBP Claim and shall be entitled to share with individual Third Party Employees information in respect of the portion of the Statement of Compensation Claim that relates to such individual;

- g. If a Third Party current or former employee (including retirees) is not included in the Statement of Compensation Claim sent to a Third Party or disputes any of the Compensation Claim Information used to calculate the portion of the Third Party RHBP Claim relating to such individual, the Third Party employee shall advise the Third Party by no later than November 15, 2021. The Third Party shall review such information and determine if a Notice of Dispute is to be filed with the Monitor which shall be filed no later than 5:00pm on November 26, 2021, being the Third Party RHBP Claims Bar Date;
 - h. The treatment of Third Party RHBP Claims is entirely without prejudice and does not constitute any acknowledgement or admission of liability or obligation of any kind by LU, the Third Parties or their respective directors and officers to any Third Party current or former employee;
 - i. All other claims asserted by the Third Parties relating to the RHBP (“**Other RHBP Claims**”), if any, shall be dealt with in the claims process commenced pursuant to the Claims Process Order;
 - j. LU shall not assert any claims against a Third Party in respect of any Third Party RHBP Claim or any payment or distribution made or to be made by LU (whether under a Plan or otherwise) in respect of a Third Party RHBP Claim, including a claim for contribution or indemnity. However, LU may assert that the quantification of an Other RHBP Claim, if any, shall be reduced as a result of any payments or distributions made in respect of a Third Party RHBP Claim.
25. In the Monitor’s view, the identification of potential Third Party RHBP Claims by working with the Third Parties, the mailing of the Statements of Compensation Claim, and the notice to Third Party current and former employees as outlined above, will provide sufficient and timely notification to allow Third Parties to receive information from the Monitor and their respective current and former employees (including retirees), and submit their Notice of Dispute, if necessary, prior to the Third Party RHBP Claims Bar Date.
26. The Monitor was actively engaged in the discussions among LU and the Third Parties that led to the agreement as set out above. The agreement is without prejudice to all arguments LU and the Third Parties have regarding their liability to Third Party current or former employees in respect of the RHBP. However, the agreement provides a path forward to resolve potential Compensation Claims of the Third Party current or former employees (including retirees) who participated in the RHBP in an efficient manner and avoid costly litigation that will be distracting to LU while it continues to focus on its restructuring.

Accordingly, the Monitor supports the amendments to the Compensation Claims Process Order to reflect the agreement described above.

AUDIT BY THE AUDITOR GENERAL OF ONTARIO

27. As set out in the Seventh Report, the Applicant has expended significant time and effort responding to requests from a number of government ministries, regulatory bodies and legislative authorities.
28. On April 28, 2021, the Standing Committee on Public Accounts of the Legislature of Ontario, passed a motion requesting that the Auditor General of Ontario (the “**AGO**”) perform a value-for-money audit of LU for the period 2010-2020.
29. Since then, LU has received extensive information requests from the AGO. In addition, the AGO has met with a number of LU employees and directors. A team from the AGO visited the campus on more than one occasion and spent several days on site.
30. LU has cooperated with the AGO’s investigation and has made considerable efforts to respond to the AGO’s information requests, including producing significant volumes of information and providing the AGO with direct access to financial accounting and other systems. This has also involved external counsel assisting LU with a review of privileged documents and to ensure that disclosure of information does not breach any orders issued by the Court in this proceeding. With the exception of documents subject to privilege or court-ordered confidentiality, LU continues to provide the AGO with all requested documents. The Monitor notes that given the extensive nature of the information requests and LU’s limited resources, the process of responding to the information requests has taken a considerable amount of time and effort.
31. The AGO takes the position that pursuant to section 10 of the AG Act, the AGO is entitled to privileged documents, including those that are subject to solicitor-client privilege, settlement privilege and documents subject to court-ordered confidentiality. LU disagrees with this position.
32. After further discussion, the parties agreed that the issue of whether the AG Act (a) requires an auditee to give privileged information to the AGO, and (b) provides the AGO with a right of access to an auditee’s privileged information should be heard by the Court as an application under paragraphs 14.05(3)(d) and 14.05(3)(h) of the *Rules of Civil Procedure* as a Commercial List matter and not within the CCAA proceeding. As a result, the parties attended at a case conference on September 27, 2021 and proposed the following procedure which was approved by way of endorsement of Chief Justice Morawetz:

- a. The AGO may commence an application for an interpretation of section 10 of the AG Act;
 - b. The only issue that will be raised in the application is the statutory interpretation of section 10 of the AG Act. No CCAA-related issues will be raised in connection with the application. LU reserves all rights to seek any relief in relation to the AGO's request for privileged documents or regarding other aspects of the audit.
 - c. The application will be heard on the following timetable, subject to potential amendment:
 - i. AGO to serve its application record on or before September 30, 2021;
 - ii. LU to serve a responding application record on or before October 15, 2021;
 - iii. Cross-examinations, if any, to be completed on or before October 29, 2021;
 - iv. AGO to serve its factum on or before November 12, 2021;
 - v. LU to serve its factum on or before November 26, 2021; and
 - vi. Hearing date to be set for December 6, 2021.
33. The parties may vary the timetable on consent or return to court to seek a variation.

MONITOR'S RECOMMENDATIONS AND CONCLUSIONS

34. For the reasons stated herein, the Monitor supports the proposed amendments to the Compensation Claims Process Order in respect of Third Party RHBP Claims. Accordingly, the Monitor recommends that the Court grant the relief sought by the Applicant.

All of which is respectfully submitted this 28th day of September, 2021.

**ERNST & YOUNG INC., in its capacity as
Monitor of the Applicant, and not in
its corporate or personal capacity**

Per:



**Sharon S. Hamilton, CPA, CA, CIRP, LIT
Senior Vice President**