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

REPLY FACTUM OF THORNELOE UNIVERSITY

(Appeal of decision of claims officer re loss of value claim, returnable November 18, 2022)

November 14, 2022

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1. The Monitor's opposition to Thorneloe's claim for Loss of Business Value can be distilled into the following:

A. The Claims Officer's decision was a finding of fact and he did not err in assessing damages based on a contract law loss of profits approach and concluding that since Thorneloe was not profitable, it could not have a claim for loss of value.

B. Thorneloe cannot rely on the Loss of Business Value approach because it has not demonstrated that it mitigated its losses.

C. The Claims Officer was correct to reject the report of the independent valuation expert who calculated Thorneloe's loss based on the Loss of Business Value approach.

D. Thorneloe cannot include retained assets, such as cash and cash equivalents, in its claim for Loss of Business Value.

2. The Monitor's arguments are addressed below.

A. The Claims Officer made a legal error when he employed a contractual loss of profits approach to reject Thorneloe's loss of value claim.

3. Under section 32(7) of the *Companies' Creditors Arrangement Act,* R.S.C., 1985, c. C-36 ("**CCAA**"), a counterparty to an agreement with the debtor which the debtor has disclaimed has a provable claim for "a loss ***in relation to*** the disclaimer". The section is drafted in very broad language indicative of the intention of Parliament to allow a wide range of claims that are "in relation to" a disclaimer imposed on a counterparty by a debtor in a CCAA proceeding.

4. Business valuation law holds that there are two methods by which a business loss can be valued: the Loss of Profits approach and the Loss of Business Value approach. Which approach to

use is dictated by the circumstances. As valuation experts Farley Cohen and Prem Lobo state: "A *business value approach* is applicable in situations where a business has been permanently and completely shut down or destroyed as a result of the actions of a defendant."[1]

5. The report of Glenn Bowman, an independent Chartered Business Valuator ("**CBV**"), correctly applies the Loss of Business Value approach. He notes in his report that Thorneloe has been permanently shut down as a functioning university:

> 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.[2]

6. The Claim Officer did not consider that there are two methods of valuation. Rather he concluded that a party to a breach of contract can only claim the profits lost *from that contract*. In so doing he erred in multiple ways. First, by not considering the two approaches of valuation law, he misdirected himself by not even considering the other applicable method of Loss of Business Value. Where a trier of fact does not fully consider the relevant law, that is an error of law that warrants review.

7. Second, in his contractual damages analysis, the Claims Officer ignored the fact that the disclaimer "permanently and completely shut down or destroyed" Thorneloe – which is a key criterion that supports a valuation based on the Loss of Business Value approach. Instead, he

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[1] Farley J Cohen & Prem M Lobo, "Business value as a measure of loss in litigation contexts: Reflecting business 'reality' over hypothetical 'fantasy'" (2011) 20:1 Adv J 3 at 5 [*Farley J Cohen & Prem M Lobo*]. Thorneloe Book of Authorities, Tab 11.

[2] [emphasis added] Thorneloe University, Estimate Evaluation as of April 30, 2021 at 42 ["**The Bowman Report**"]. Motion Record of Thorneloe, Tab 3.

treated the disclaimer as a simple breach of contract as if the Federation Agreement was just a single contract for which Thorneloe would not be paid its profits. This approach ignores the fact that the disclaimer of the Federation Agreement permanently terminated Thorneloe's $2.2M grant and tuition income, and enabled Laurentian to solicit Thorneloe students away from Thorneloe courses and have them enroll in Laurentian courses for its own profit. The permanent loss of Thorneloe's income in turn caused Thorneloe to cease operation. That result, according to experts Cohen and Lobo, warrant a claim for Loss of Business Value, not contractual loss of profits.

8. In this case, the Claims Officer's use of a Loss of Profits approach is the wrong assessment of damages and is an error of law. The Claims Officer is not entitled to deference. Multiple cases have held that an assessment of damages requires the trier of fact to apply the correct *legal* test:

i. In *Agricultural Research Institute of Ontario v Campbell-High,* the Superior Court granted the plaintiff leave to appeal because the issue of whether an arbitrator erred in assessing damages for breach of contract is a question of law.[3] The Agricultural Research Institute of Ontario ("**ARIO**") entered into an agreement with the defendant landowners to permit the registration of a restrictive covenant in exchange for a payment of $239,674.00.[4] Shortly after the agreement was entered into, a new provincial government was elected which cancelled the ARIO program and refused to abide by its agreement with the defendant landowners. The defendant landowners sued for breach of contract.[5] In granting summary judgment, the court held that the provincial government breached its contract and the amount of damages was ordered to be arbitrated.[6] At the arbitration, the defendant

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[3] *Agricultural Research Institute of Ontario v Campbell-High,* [2001] OJ No 460, 2001 CarswellOnt 418 (ONSC) at paras 4-7. Reply Book of Authorities of Thorneloe University ("**Reply BOA**"), Tab 2.
[4] *Ibid* at para 2.
[5] *Ibid*.
[6] *Ibid*.

landowners were awarded $239,674.00 in damages. The provincial government sought leave to appeal this decision and claimed the arbitrator made a *legal* error in its assessment of damages. The Superior Court granted leave to appeal on the basis that the issue of whether an arbitrator applied the correct *legal* test when assessing damages is a question of law.[7]

ii. Likewise, in *AWS Engineers & Planners Corp v Deep River*, the Superior Court held,

> …the **issue of the arbitrator's interpretation of the parties' agreement as to the proper assessment of damages *is also a question of law* …** …[8]

In that case, the parties entered into a contract where the plaintiff was retained to construct a sewage treatment facility for the defendant.[9] The plaintiff failed to complete construction by the date specified in the contract and brought an action under the *Construction Lien Act*, R.S.O. 1990, c. C.30. In return, the defendant brought a counterclaim for damages.[10] The Court directed the parties to arbitration and the arbitrator awarded the plaintiff a credit from the liquidation damages award of the defendant.[11] The defendant appealed the arbitrator's decision claiming the arbitrator made a legal error in assessing the damages awarded. On appeal, the Court found the issue of whether the arbitrator erred in the assessment of damages was a question of law, irrespective of the "the fact that the arbitrator's decision may have been influenced by the facts of the case."[12]

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[7] *Ibid* at paras 4-7.
[8] [emphasis added] *AWS Engineers & Planners Corp v Deep River (Town),* [2005] OJ No 68, 249 DLR (4th) 478 (ONSC) at para 96. Reply BOA, Tab 3.
[9] *Ibid* at para 2.
[10] *Ibid* at para 4.
[11] *Ibid* at paras 5 & 8.
[12] *Ibid* at para 96.

9. The Monitor reference to the Ontario Court of Appeal's decision in *Ramdath v George Brown College of Applied Arts and Technology*.[13] is inapplicable. *Ramdath* involved a class action brought by students of George Brown College who alleged that George Brown misrepresented the post-graduate program by stating students would have the opportunity to attain industry and graduate certificates.[14] The students sued for negligent misrepresentation, breach of contract and unfair practice under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A.[15] At trial, the students were successful and were awarded *aggregate* damages under section 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA").[16] This section allows a court to distribute an award for global damages among class members on a proportional basis rather than *individual* damage awards for each class member.

10. The defendant appealed. The question for the Court of Appeal was whether the lower court judge erred by awarding aggregate damages under section 24 of the CPA rather than individual damage awards. In upholding the aggregate damage award, the Court of Appeal held "it is desirable to award aggregate damages *where the criteria of s. 24(1) are met* in order to make the class action an effective instrument to provide access to justice."[17] This approach to damages under section 24 of the CPA does not apply to this case. *Ramdath* does not support that the Claims Officer has discretion to apply an incorrect contractual damage theory to a business valuation.

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[13] *Ramdath v George Brown College of Applied Arts and Technology*, 2015 ONCA 921.
[14] *Ibid* at para 2.
[15] *Ibid.*
[16] *Ibid* at para 3.
[17] *Ibid* at para 76.

B. <u>The Claims Officer's rejection of the expert report was an error</u>

11. Once the Claims Officer erred at law by adopting the "not profitable" contract approach he then compounded his error by rejecting the Bowman Report on the basis that the expert did not appropriately consider Thorneloe's lack of profitability.

12. The Monitor and Claims Officer are obfuscating the applicable concepts.

13. First, as noted, the Claims Officer erred by using a contract law approach of lost profits, instead of the Loss of Business Value approach. Then, the Claims Officer criticizes the Bowman Report by saying it does not accurately describe Thorneloe's lack of profitability.[18] This is a compounded error, again rooted in the Claims Officer incorrect adoption of contractual loss of profits damages. The Bowman report is a report correctly based on a Loss of Business Value approach, yet the Claims Officer and Monitor go to lengths to criticize it *as if* the report should be based on the Loss Profits approach. They then say that since the report does not consider loss of profits, the report must be "flawed".[19]

14. The report is not flawed in its approach. It follows the correct legal approach to valuing Thorneloe's loss using the Loss of Business Value approach. Ironically, contrary to the Claims Officer's and Monitor's criticisms, the Bowman Report *does* consider Thorneloe's lack of profitability and still concludes that it has commercial value.[20]

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[18] Decision of Claims Officer W. Niels Ortved at para 61. Thorneloe's MR, Tab 6.
[19] Decision of Claims Officer W. Niels Ortved at para 59. Thorneloe's MR, Tab 6.
[20] The Bowman Report at 58. Thorneloe's MR Tab 3.

15. In paragraph 6 of its factum, the Monitor says the Claims Officer was entitled to reject the expert report and instead accept the criticisms put forward by the Monitor because Ernst & Young is a "financial services firm".

16. In *Laderoute v Heffernan,* the Court noted that an accounting designation does not suffice and "is not permitted to provide the court with opinion evidence."[21]

17. The use of expert valuators is well-acknowledged by Farley J. Cohen and Prem M. Lobo:

> Expert witnesses are usually retained when the quantification of loss is not readily apparent to the court and requires specialized accounting or financial analyses to assist the court in determining what amount of damages to award. Expert witnesses often have to make important decisions with respect to whether a "lost cash flow" versus a "business value" approach is applicable in a particular case.[22]

18. Business valuation requires a specialized expertise. Professionals are required to take courses and pass an examination in order to earn the designation of a CBV from the Chartered Business Valuators Institute. Glenn Bowman has earned that professional designation. His report was not undermined under cross-examination, nor by a responding expert report, nor were his qualifications attacked. In addition to the Claims Officer adopting the wrong valuation approach, these absences also constitute an error in rejecting the report.

19. The Ontario Court of Appeal held it would be unfair to allow an appellant to adduce evidence in reply to the respondent's expert testimony if the expert was not cross-examined:

> …it would be unfair to permit the defendant Erco to call such evidence in reply, particularly as **[the expert] would be deprived of any opportunity to explain the**

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[21] *Laderoute v Heffernan,* [1988] OJ No 2, 62 OR (2d) 766 at paras 9 & 13. Reply BOA, Tab 4.
[22] Farley J Cohen & Prem M Lobo, *supra* note 1 at 3. Thorneloe's BOA, Tab 11.

> **basis of his calculations, and as [the defendant] had been given every opportunity to explore the validity of the calculations on cross-examination**.[23] [emphasis added]

20. The Monitor had ample opportunity to cross-examine Mr. Bowman but chose not to.[24] In adopting the criticisms of the Monitor, the Claims Officer also effectively deprived Mr. Bowman of the opportunity to explain his expert testimony, contrary to the Court of Appeal's direction.

21. The Monitor says at paragraph 57 of its factum that the Claims Officer "recognized" that the Monitor's criticisms of the Bowman Report were not addressed by Thorneloe for "tactical" reasons. That is incorrect. The criticisms were responded to in at least one conference call with the Monitor, and the responses by Thorneloe were rejected by the Monitor out of hand. An offer to settle was later served, as well as a proposal for mediation *before* the claims hearing. The Monitor rejected all such overtures and stuck to its "no loss of profits" basis to reject this claim.

C. Thorneloe had no reasonable opportunity to mitigate its losses caused by the disclaimer and Laurentian's immediate removal of Thorneloe's courses from the curriculum

22. In paragraphs 54-55 of its factum, the Monitor says that Thorneloe cannot rely on the Loss of Value approach because it did not mitigate its losses. The argument fails for at least four reasons:

23. First, the Monitor already argued lack of mitigation before the Claims Officer. The Claims Officer acknowledged the Monitor's argument, and Thorneloe's response to it, but made no ruling in favour of the Monitor.[25] The Claims Officer's decision to reject Thorneloe's loss of value claim was on the incorrect approach that it was not profitable, not because Thorneloe did not mitigate its

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[23] *Erco Industries Ltd v Allendale Mutual Insurance Co,* [1988] OJ No 2, 62 OR (2d) 766 (ONCA) at para 23. Reply BOA, Tab 5.
[24] Glenn Bowman's report was delivered to the Monitor on December 17, 2021. The Monitor's Disallowance was delivered on June 8, 2022. In that period, there was no request made to cross-examine Mr. Bowman, nor was a responding expert report provided.
[25] Decision of Claims Officer W. Niels Ortved at paras 55-57. Thorneloe's MR, Tab 6.

losses. The Monitor is seeking to impermissibly re-argue a submission that the Claims Officer did not accept, but that it did not cross-appeal.

24. Second, the Monitor relies on *Southcott Estates Inc v Toronto Catholic District School Board*[26] to assert Thorneloe cannot claim damages based on the Loss of Business Value approach because Thorneloe did not take all the steps required to mitigate its losses. However, as articulated by the Supreme Court of Canada in that very decision, the burden of proof in demonstrating Thorneloe did not reasonably mitigate its losses lies with the Monitor, and the Monitor has not met that burden with any cogent evidence. Rather, the evidence shows the opposite that Thorneloe did mitigate as much as it could by keeping its residence open and not evicting the students:

> [24] "[w]here it is alleged that the plaintiff has failed to mitigate, **the burden of proof is on the defendant, who needs to prove both that the plaintiff failed to make reasonable efforts to mitigate and that mitigation was possible**."[27] [emphasis added]

25. In the circumstances of this case, Thorneloe had no reasonable opportunity to mitigate the loss of its business value caused by Laurentian's cancellation of its courses and resulting loss of $2.2M grant and tuition income. As noted, on May 2, 2021, this Court upheld Laurentian's disclaimer of its Federation Agreement with Thorneloe.[28] The next morning, Laurentian sent a news release to faculty, staff and students stating that "Spring courses previously taught by any of the Federated universities, including Thorneloe University, will no longer be counted for credit towards a Laurentian degree."[29] As a result of Laurentian's sudden announcement, later the same day, the President of Thorneloe, Dr. John Gibaut, had to send a note to Thorneloe students

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[26] *Southcott Estates Inc v Toronto Catholic District School Board*, 2012 SCC 51. Reply BOA, Tab 6.
[27] *Ibid* at para 24.
[28] *Laurentian University of Sudbury*, 2021 ONSC 3230.
[29] Affidavit, Exhibit A: Email of News Release from Laurentian (dated May 3, 2021).

clarifying that, "Laurentian University cancelled all our courses."[30] Overnight, Thorneloe went from a university with courses and faculty to a university with no courses and soon-to-be terminated faculty and staff. It was impossible to mitigate grant and tuition losses is such circumstances. As noted by business valuation experts, Cohen and Lobo:

> With respect to mitigation, a plaintiff is expected to make "reasonable" attempts to minimize its losses; ***a plaintiff will usually not be faulted where mitigating would necessitate taking on excessive risks, or pursuing financially or operationally infeasible or uneconomical alternatives***.[31] [emphasis added]

26. Similarly, the Court in *321665 Alberta Ltd v Mobil Oil Canada* held:

> 237. The authorities dealing with mitigation *do not support the proposition that a party which has been wronged is required to undertake extraordinary measures to stay in business.*
>
> …
>
> 249. The Plaintiff had a full legal entitlement to carry on with its business model which included a fleet of trucks. ***The Defendants caused harm to the Plaintiff and cannot seek refuge behind the argument that the Plaintiff could have survived if it downsized***.[32] [emphasis added]

27. In that case, the defendants were oil well operators who destroyed the plaintiff's fuel hauling company by failing to engage in a competitive bid process when they decided to rely on the plaintiff's competitor for all its properties. Prior to the bid process, the plaintiff primarily relied on the defendants for its business. In response to the action launched by the plaintiff, the defendants argued the plaintiff could have restructured and downsized its company to mitigate its losses. The Court rejected the defendants' argument that the plaintiff could have survived if it downsized.

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[30] Affidavit, Exhibit B: Email from Thorneloe President (dated May 3, 2021).
[31] *Farley J Cohen & Prem M Lobo, supra* note 1 at 5-6. Thorneloe's BOA, Tab 11.
[32] *321665 Alberta Ltd v Mobil Oil Canada,* 2011 ABQB 292 at paras 237 & 249. Reply BOA, Tab 1.

28. In the circumstances of this case – particularly, Laurentian's abrupt cancellation of Thorneloe's courses – the Monitor's argument that Thorneloe *could have* restructured is entirely unreasonable.

29. Third, the Monitor says that Thorneloe could have mitigated its losses by selling the intellectual property of its courses or by continuing to operate its residence. The first argument is both unreasonable and unrealistic. Given the timing of the removal of the courses by Laurentian, there was no reasonable opportunity for Thorneloe to simply put its courses up for sale. As a direct result of this removal, Thorneloe's classes were cancelled and the instructors had to be let go. Even if Thorneloe had sufficient time required to market and sell the courses, which it did not, Thorneloe could not have simply unilaterally sold the "intellectual property" of these courses as the Monitor says in paragraph 65 of its factum. Among other tasks to sell such "intellectual property", Thorneloe would have to consult and make arrangements with the persons who have copyrights over the materials. As set out in the Collective Agreement between the Laurentian University Faculty Association and Thorneloe University:

> …**the copyright to all forms of written, artistic and recorded works shall be retained by the Member(s) [full-time academic staff] responsible for the origination of the materials**. Such materials shall not be published, licensed, or released in any way, or amended, edited, cut, or in any way altered, without the written consent of the Member(s) holding copyright.[33]

30. Thorneloe did continue to operate its residence, rather than evicting the students from their rooms, which would certainly have negatively impacted those students. From a mitigation

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[33] [emphasis added] Collective Agreement between the Laurentian University Faculty Association and the Board of Governors of Thorneloe University: 2017-2020" (16 January 2018) at 42, online (pdf): *The Laurentian University Faculty Association* <lufappul.ca/wp/wp-content/uploads/2016/09/Thorneloe-LUFA-CA-2017-2020-Signed.pdf>. Affidavit of Abir Shamim, sworn November 14, 2022

perspective, Thorneloe *did* take all reasonable steps to mitigate, yet Thorneloe still suffered a permanent loss of grant and tuition income and thus has a claim for loss of business value.

31. Fourth, in paragraph 55 of its factum, the Monitor suggests that other "claimants" were able to fully mitigate their losses and by extension, so could have Thorneloe. First, the Monitor provides no evidence for its statements. Second, the public information that exists shows that the two other federated universities, University of Sudbury ("**USudbury**") and Huntington University ("**Huntington**") are not currently operating as teaching universities. Huntington's future plans are not publicly known. USudbury is reportedly in the process of re-inventing itself as a French-only institution, and, after 1.5 years after the disclaimer decision, is still not open as a university. The circumstances of these entities are not comparable with Thorneloe.

D. Despite the value of the assets retained by Thorneloe, its claim for loss of commercial value is in the range of $2.8M - $3.3M

32. In paragraph 56 of its factum, the Monitor asserts Thorneloe's claim for loss of commercial value is exaggerated because Thorneloe retains cash and cash equivalents of approximately $6.7 million. In paragraph 49 of its main factum, Thorneloe states the Claims Officer erred by not allowing as an alternative its loss of value claim of $2.8M to $3.3M, that is its loss of value claim of $9.8M net the value of its retained assets.

33. Thorneloe acknowledges that its cash balances have not *yet* been entirely depleted. Nevertheless, without its $2.2M a year tuition and grant income Thorneloe's cash will continue to be depleted. As noted by Cohen and Lobo, Thorneloe has been put into a "slow death" scenario by Laurentian:

> The *permanence* of the loss in question is an important criterion to justify the use of a business value approach in a loss quantification context. Permanence can manifest itself in the following scenarios (among others):
>
> - There is a *complete* shutdown or cash flow loss.
> - The business *winds down* initially, and then there is a complete shutdown or cash flow loss (the "slow death" scenario),
> - A *portion or segment* of a business shuts down (or there is a *partial* cash flow loss), but the rest of the business carries on operations.[34]

34. A "slow death" scenario also warrants a loss claim be determined on the Loss of Business Value Approach which the Bowman Report has done.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 14th day of November, 2022

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[34] Farley J Cohen & Prem M Lobo, *supra* note 1 at 4-5. Thorneloa's BOA, Tab 11.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *321665 Alberta Ltd v Mobil Oil Canada,* 2011 ABQB 292

2. *Agricultural Research Institute of Ontario v Campbell-High,* [2001] OJ No 460, 2001 CarswellOnt 418 (ONSC)

3. *AWS Engineers & Planners Corp v Deep River (Town),* [2005] OJ No 68, 249 DLR (4th) 478 (ONSC)

4. *Erco Industries Ltd v Allendale Mutual Insurance Co,* [1988] OJ No 2, 62 OR (2d) 766 (ONCA)

5. *Laderoute v Heffernan,* 2019 ONSC 914

6. *Southcott Estates Inc v Toronto Catholic District School Board,* 2012 SCC 51

SCHEDULE "B"
RELEVANT STATUTES

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

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.

2. *Class Proceedings Act, 1992*, S.O. 1992, c. 6

Aggregate assessment of monetary relief

- **24 (1)** The court may determine the aggregate or a part of a defendant's liability to class members and give judgment accordingly where,
  - **(a)** monetary relief is claimed on behalf of some or all class members;
  - **(b)** no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and
  - **(c)** the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members. 1992, c. 6, s. 24 (1).

Average or proportional application

- **(2)** The court may order that all or a part of an award under subsection (1) be applied so that some or all individual class members share in the award on an average or proportional basis. 1992, c. 6, s. 24 (2).

Idem

- **(3)** In deciding whether to make an order under subsection (2), the court shall consider whether it would be impractical or inefficient to identify the class members entitled to share in the award or to determine the exact shares that should be allocated to individual class members. 1992, c. 6, s. 24 (3).

Court to determine whether individual claims need to be made

- **(4)** When the court orders that all or a part of an award under subsection (1) be divided among individual class members, the court shall determine whether individual claims need to be made to give effect to the order. 1992, c. 6, s. 24 (4).

Procedures for determining claims

- **(5)** Where the court determines under subsection (4) that individual claims need to be made, the court shall specify procedures for determining the claims. 1992, c. 6, s. 24 (5).

Idem

- **(6)** In specifying procedures under subsection (5), the court shall minimize the burden on class members and, for the purpose, the court may authorize,
  - **(a)** the use of standardized proof of claim forms;
  - **(b)** the receipt of affidavit or other documentary evidence; and
  - **(c)** the auditing of claims on a sampling or other basis. 1992, c. 6, s. 24 (6).

Time limits for making claims

- **(7)** When specifying procedures under subsection (5), the court shall set a reasonable time within which individual class members may make claims under this section. 1992, c. 6, s. 24 (7).

Idem

- **(8)** A class member who fails to make a claim within the time set under subsection (7) may not later make a claim under this section except with leave of the court. 1992, c. 6, s. 24 (8).

Extension of time

- **(9)** The court may give leave under subsection (8) if it is satisfied that,
  - **(a)** there are apparent grounds for relief;
  - **(b)** the delay was not caused by any fault of the person seeking the relief; and
  - **(c)** the defendant would not suffer substantial prejudice if leave were given. 1992, c. 6, s. 24 (9).

Court may amend subs. (1) judgment

- **(10)** The court may amend a judgment given under subsection (1) to give effect to a claim made with leave under subsection (8) if the court considers it appropriate to do so. 1992, c. 6, s. 24 (10)

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

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ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

REPLY FACTUM OF THORNELOE UNIVERSITY

(Appeal of decision of claims officer re loss of value claim, returnable November 18, 2022)

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