Court File No. CV-23-00697284-00CL

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 LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

PRE-FILING REPORT OF THE PROPOSED INFORMATION OFFICER
April 12, 2023

OVERVIEW

1. On April 4, 2023, LTL Management LLC (the "**Debtor**") filed a petition in the United States Bankruptcy Court for the District of New Jersey (the "**U.S. Bankruptcy Court**") seeking relief under title 11 of chapter 11 of the United States Code (the "**Bankruptcy Code**"). The Debtor's case (the "**2023 Chapter 11 Proceedings**") has been assigned to Judge Michael B. Kaplan.
2. The 2023 Chapter 11 Proceedings are the Debtor's second filing under the Bankruptcy Code. The Debtor's prior filing under the Bankruptcy Code (the "**2021 Chapter 11 Proceedings**")[1] was dismissed by the U.S. Bankruptcy Court on April 4, 2023. After nearly 15 months of litigation, the United States Court of Appeals for the Third Circuit issued a detailed opinion (the "**Third Circuit Opinion**") and directed the U.S. Bankruptcy Court to enter an order dismissing the 2021 Chapter 11 Proceedings. The history of the 2021 Chapter 11 Proceedings is complex and described in detail in the reports filed by Ernst & Young Inc. in its capacity as

[1] Pursuant to an application served by the Debtor under Part IV of the *Companies' Creditors Arrangement Act* ("**CCAA**") on December 16, 2021, the 2021 Chapter 11 Proceedings were recognized as a "foreign main proceeding" by an order of the Ontario Superior Court of Justice (Commercial List) on December 17, 2021 (the "**2021 Recognition Proceedings**").

information officer in the 2021 Recognition Proceedings (in such capacity, the "**2021 Information Officer**").

3. The Debtor has advised that the 2023 Chapter 11 Proceedings differ from the 2021 Chapter 11 Proceedings in two important ways. First, the Debtor has entered into new financing arrangements with its affiliates (including its parent company, and its ultimate parent company) which are intended to comply with the financial distress test outlined in the Third Circuit Opinion. Second, the Debtor advises that it has the support of approximately 60,000 plaintiffs in respect of a proposed plan that will be funded with approximately $8.9 billion (on a net present value basis).
4. Certain plaintiffs have advised the U.S. Bankruptcy Court that they oppose the 2023 Chapter 11 Proceedings and the relief sought therein. The Proposed Information Officer understands that other plaintiffs are supportive of the proceedings and expressed such support at the hearing on April 11, 2023 before the U.S. Bankruptcy Court. If litigation in respect of the 2023 Chapter 11 Proceedings proceeds, it is expected to take place in the United States.

PURPOSE

5. The purpose of this Pre-Filing Report of Ernst & Young Inc. in its capacity as proposed information officer (the "**Proposed Information Officer**") is to provide information to the Court with respect to the relief requested in the application by the Debtor, including, recognition of the 2023 Chapter 11 Proceedings as a foreign main proceeding under the CCAA and recognition of certain orders made by the U.S. Bankruptcy Court (the "**Application**").
6. The Proposed Information Officer notes that a pre-filing report in a recognition proceeding is not required and may be considered unusual. However, given the complex and somewhat novel history of these proceedings, the Proposed Information Officer files this Pre-Filing Report to provide additional context on the Application.

TERMS OF REFERENCE

7. In preparing this Pre-Filing Report and making the comments herein, the Proposed Information Officer has relied solely on information and documents provided by the Debtor and its

Canadian and U.S. legal counsel and publicly available information such as court documents and press releases (collectively, the “**Information**”).

8. The Proposed Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Information Officer has not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Information Officer expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. Unless otherwise indicated, the Proposed Information Officer’s understanding of factual matters expressed in this Pre-Filing Report concerning the Debtor and its businesses is based on the Information, and not independent factual determinations made by the Proposed Information Officer.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in United States Dollars.

THE FOREIGN REPRESENTATIVE’S APPLICATION

11. By its Application, the Debtor in its capacity as the “Foreign Representative” authorized by the U.S. Bankruptcy Court, seeks:
    i) an order granting recognition of the 2023 Chapter 11 Proceedings as a “foreign main proceeding”; and

    ii) an order granting various supplemental relief in respect of the 2023 Chapter 11 Proceedings, including

        i. recognizing and giving full force and effect in all provinces and territories of Canada to the 2023 TRO (as defined below) and the April 11, 2023 order of the U.S. Bankruptcy Court authorizing the Debtor to act as foreign representative on behalf of its estate (the “**Foreign Representative Order**”); and

        ii. appointing Ernst & Young Inc. as information officer in connection with the recognition proceedings commenced in Canada pursuant to Part IV of the

CCAA with respect to the 2023 Chapter 11 Proceedings.

12. In connection with the materials filed on the first day of the 2023 Chapter 11 Proceedings, the Debtor filed a complaint and a motion seeking a temporary restraining order (the "**2023 TRO**"). The U.S. Bankruptcy Court issued the 2023 TRO on April 5, 2023 (as amended on April 6, 7 and 10) on an *ex parte* basis, enjoining talc personal injury claims against the Debtor, its affiliates and certain indemnified parties, referred to as "Protected Parties" (as defined in the 2023 TRO). A further hearing is scheduled for April 18, 2023.

13. In support of the 2023 TRO, the Debtor's motion materials argued that the requested relief was both appropriate and necessary. In the Debtor's view, permitting the Debtor Talc Claims (as defined in the 2023 TRO) against the Protected Parties while the Debtor simultaneously works to reorganize by resolving the same claims would: (i) defeat the purpose of the 2023 Chapter 11 Proceedings; (ii) result in irreparable harm to the Debtor's estate due to indemnification obligations in favour of certain of the Protected Parties, (iii) undermine and circumvent the purposes and spirit of the automatic stay, and (iv) divert the Debtor from its reorganization efforts.

14. On April 11, 2023, the U.S. Bankruptcy Court conducted a hearing in respect of certain first day matters, including the hearing in respect of the Foreign Representative Order. No party opposed entry of the Foreign Representative Order, but certain claimants' counsel appeared to advise the U.S. Bankruptcy Court that they opposed the 2023 Chapter 11 Proceedings in its entirety and request that the New Jersey Bankruptcy Court *sua sponte* dismiss the 2023 Chapter 11 Proceedings. Other plaintiffs' counsel appeared to speak in favour of the proceedings.

15. The U.S. Bankruptcy Court declined to dismiss the 2023 Chapter 11 Proceedings at the April 11, 2023 hearing.

RECOMMENDATION

16. Consistent with its position in the 2021 Recognition Proceedings, the Proposed Information Officer believes that coordination of the proceedings in the United States and Canada provides the best opportunity to ensure fairness to stakeholders regardless of location. The Proposed Information Officer also believes that if a consensual resolution can be achieved, Canadian

plaintiffs should have an opportunity to consider such resolution on the same terms as their counterparts in the United States.

17. The Proposed Information Officer recommends that this Court grant the relief requested in the Application to promote comity and ensure that no plaintiff is given an advantage solely because of their location.

All of which is respectfully submitted this 12th day of April, 2023.

ERNST & YOUNG INC.
Solely In its capacity as Proposed Information Officer of
LTL Management LLC, and not in its personal capacity

Per:

Alex Morrison
Senior Vice President

Per:

Stuart Clinton
Senior Vice President

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Proceeding Commenced at Toronto

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