

**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 PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
U. S. STEEL CANADA INC.

**FACTUM OF THE APPLICANT
U. S. STEEL CANADA INC.**

**(re: Non-USW Support Agreement, Non-USW Settlement
Agreement and Amended Plan)**

April 19, 2017

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TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
U. S. STEEL CANADA INC. (the "**Applicant**" or "**USSC**)

FACTUM OF THE APPLICANT

PART I—OVERVIEW

1. On March 15, 2017, USSC filed a plan of compromise, arrangement and reorganization (the "**Plan**") which, along with agreements with various stakeholders, would enable USSC to emerge from these proceedings as a competitive, going-concern, stand-alone steel manufacturer under new ownership.

2. The Non-USW Active and Retiree Beneficiaries excluding Opt-Out Individuals¹ are a significant stakeholder group in these proceedings, demonstrated by the fact that they have been appointed Representatives and Representative Counsel by this Court.² Following the filing of the Plan, USSC and the Plan Sponsor³ engaged in extensive negotiations with Representative

¹ As defined in the Representative Counsel Order, dated October 8, 2014, as amended or amended and restated from time to time (the "**Representative Counsel Order**"), Exhibit B to the Affidavit of William E. Aziz, sworn April 19, 2017 (the "**Aziz Affidavit**"), Motion Record of the Applicant (re: Non-USW Support Agreement, Non-USW Settlement Agreement and Amended Plan) dated April 19, 2017 ("**Motion Record**"), Tab 2B.

² As defined in the Representative Counsel Order, Motion Record, Tab 2B.

³ As defined in the First Amended and Restated Plan of Compromise, Arrangement and Reorganization pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") and the *Canada Business Corporations Act* concerning, affecting and involving U. S. Steel Canada Inc. (the "**Amended Plan**"), Exhibit A to the Supplemental Information Circular with Respect to a Plan of Compromise, Arrangement and Reorganization (the "**Supplemental Information Circular**"), Exhibit E to the Aziz Affidavit, Motion Record, Tab 2E. Capitalized

Counsel and the Representatives with a view to obtaining support for the Transaction from the Non-USW Active and Retiree Beneficiaries represented by them.

3. These negotiations culminated with the signing of (a) a letter of agreement dated April 10, 2017 between Representative Counsel (on behalf of the Non-USW Active and Retiree Beneficiaries), USSC and the Plan Sponsor (the “**Non-USW Support Agreement**”)⁴, and (ii) a settlement agreement between Representative Counsel (on behalf of the Non-USW Settlement Creditors (as defined therein)), USSC and the Plan Sponsor (the “**Non-USW Settlement Agreement**”).⁵

4. The Non-USW Support Agreement and Non-USW Settlement Agreement ensure the support of another one of USSC’s key stakeholder groups for its proposed restructuring Transaction. The terms of the Agreements are fair and reasonable and balance the interests of the parties and other affected constituencies equitably.

5. USSC is seeking two orders on this motion to implement the Non-USW Support Agreement and Non-USW Settlement Agreement and deal with certain other matters that are necessary to complete the Transaction:

- (a) The Settlement Approval Order,⁶ among other things approving the Non-USW Support Agreement and Non-USW Settlement Agreement; and
- (b) The Amended Plan Order,⁷ among other things (a) accepting the filing of the amended and restated plan of compromise, arrangement and reorganization of the

terms used in this factum and not otherwise defined have the meanings provided in the Amended Plan or Aziz Affidavit.

⁴ Non-USW Support Agreement, Exhibit C to the Aziz Affidavit, Motion Record, Tab 2C.

⁵ Non-USW Settlement Agreement, Exhibit D to the Aziz Affidavit, Motion Record, Tab 2D.

⁶ Draft Settlement Approval Order, Motion Record, Tab 3.

Applicant under the CCAA and the CBCA dated April 25, 2017 (the “**Amended Plan**”), (b) approving the classification of creditors as set out in the Amended Plan for the purposes of the Meetings, (c) authorizing the Applicant to enter into the Second PSA Amending Agreement and Second Province Support Amending Agreement (as defined below) and (d) providing a mechanism for determining the value of the PBGF Assessment Claim (as defined below).

PART II—FACTS

Negotiations with Representative Counsel

6. On March 15, 2017, the Court accepted the Plan for filing and issued an Order authorizing USSC to call, hold and conduct meetings of its creditors to vote on the Plan and ancillary relief related thereto (the “**Meetings Order**”).⁸ The Meetings Order provides that meetings will be held on April 27, 2017 for the purposes of considering and voting on the Plan.⁹ In accordance with the Meetings Order, the prescribed materials were distributed to persons entitled to vote and their representatives.¹⁰

7. Following the issuance of the Meetings Order and the distribution of the materials, USSC and the Plan Sponsor engaged in extensive negotiations with Representative Counsel and the Representatives in relation to the Transaction with a view to obtaining the support for the Transaction from the Non-USW Active and Retiree Beneficiaries represented by them.¹¹

⁷ Draft Amended Plan Order, Motion Record, Tab 4.

⁸ Aziz Affidavit at para. 9, Motion Record, Tab 2.

⁹ Aziz Affidavit at para. 11, Motion Record, Tab 2.

¹⁰ Aziz Affidavit at paras. 12-14, Motion Record, Tab 2.

¹¹ Aziz Affidavit at para. 17, Motion Record, Tab 2.

The Non-USW Support Agreement

8. Those negotiations culminated on April 10, 2017 with the signing of the Non-USW Support Agreement.¹² On April 13, 2017, the Board of Directors of USSC approved the Non-USW Support Agreement, subject to Court approval.¹³

9. There are four elements to the Non-USW Support Agreement:

- (a) a “parity clause” that provides that if USSC agrees with USW Local 1005 in the HW Local 1005 CBA Amendment to more favourable contributions in respect of OPEBs than the terms contemplated by the Plan, USSC will also provide more favourable contributions to the Non-USW Main Pension and OPEB Claim holders on similar terms;¹⁴
- (b) settlement of Non-USW Employee Termination Claims and Non-USW Unfunded Supplemental Pension Claims (the “**Settlement Claims**”) for a payment of \$9 million (other than the smallest of these claims, which will continue to be treated as claims of Convenience Creditors);¹⁵
- (c) all active salaried employees of USSC who currently participate in a Main Pension Plan will cease to accrue further defined benefit (DB) pension benefits under the applicable Main Pension Plan as at December 31, 2017 and will join the Group Registered Retirement Savings Plan maintained by the Applicant (the

¹² Aziz Affidavit at para. 18, Motion Record, Tab 2.

¹³ Aziz Affidavit at para. 18, Motion Record, Tab 2.

¹⁴ Aziz Affidavit at para. 21, Motion Record, Tab 2; Non-USW Support Agreement, section A., Motion Record, Tab 2C, p. 132.

¹⁵ Aziz Affidavit at paras. 22-23, Motion Record, Tab 2; Non-USW Support Agreement, section B., Motion Record, Tab 2C, pp. 132-133.

“**GRRSP**”) effective January 1, 2018, with recognition of employment service for the determination of employer contributions under the GRRSP;¹⁶ and

- (d) Representative Counsel, on behalf of the Non-USW Active and Retiree Beneficiaries it represents, agrees to support the Amended Plan and the Transaction it contemplates.¹⁷

The Non-USW Settlement Agreement

10. The Representatives, Representative Counsel and their financial and actuarial advisers subsequently worked with USSC and the Plan Sponsor to settle the terms of the Non-USW Settlement Agreement and the Amended Plan, both of which are required to implement the arrangements contemplated by the Non-USW Support Agreement if it is approved by the Court.¹⁸

11. The Non-USW Settlement Agreement has been approved by the Board of Directors of USSC.¹⁹

Plan Amendments re Non-USW Support Agreement

12. The Amended Plan includes the following amendments necessary to give effect to the Non-USW Support Agreement and Non-USW Settlement Agreement:

¹⁶ Aziz Affidavit at paras. 24-25, Motion Record, Tab 2; Non-USW Support Agreement, section C., Motion Record, Tab 2C, p. 133.

¹⁷ Aziz Affidavit at para. 26, Motion Record, Tab 2; Non-USW Support Agreement, section D., Motion Record, Tab 2C, p. 133-136.

¹⁸ Aziz Affidavit at para. 19, Motion Record, Tab 2.

¹⁹ Aziz Affidavit at para. 27, Motion Record, Tab 2.

- (a) The Settlement Claims are removed from the class of General Unsecured Creditors. Any Non-USW Termination Claim or Non-USW Unfunded Supplemental Pension Claim that is a Proven Claim as of April 21, 2017 in an amount less than \$20,000 is excluded from the Settlement Claims and will remain subject to the Amended Plan in the General Unsecured Creditor class so that the holder thereof can take advantage of the distribution available to Convenience Creditors;²⁰
- (b) A reduction in the size of the General Unsecured Creditor Pool by \$2.5 million, being the portion of the General Unsecured Creditor Pool that was notionally attributable to the Settlement Claims, based on the Applicant's estimate of about \$25 million of Settlement Claims and an estimated distribution of about 10 cents-on-the-dollar;²¹
- (c) The provisions of the Plan that allow for modifications to be made to it have been changed in the Amended Plan to enable USSC, with the consent of Representative Counsel, the Plan Sponsor and the Monitor, to amend the Plan after the Meetings, subject to certain restrictions to protect General Unsecured Creditors, to implement the "parity" OPEB aspect of the Non-USW Support Agreement if necessary.²²

²⁰ Aziz Affidavit at paras. 23, 28, Motion Record, Tab 2.

²¹ Aziz Affidavit at para. 29(a), Motion Record, Tab 2.

²² Aziz Affidavit at para. 30, Motion Record, Tab 2.

PBGF Assessment Claims

13. USSC pays an annual assessment fee to the Pension Benefits Guarantee Fund (the “**PBGF**”) for each of the Main Pension Plans and the Non-Main Pension Plans.²³ Since September 29, 2015, the obligation of USSC to pay outstanding assessment amounts has been suspended.²⁴ The total amount outstanding to the PBGF in respect of the Main Pension Plans is currently \$8,703,754.46 (the “**PBGF Assessment Claim**”).²⁵ In connection with its restructuring effort, USSC needs to address the PBGF Assessment Claim in the Amended Plan.²⁶

14. The Amended Plan includes the following amendments necessary to address the PBGF Assessment Claim:

- (a) The PBGF Assessment Claim is added to the class of General Unsecured Creditors;²⁷ and
- (b) The General Unsecured Creditor Pool is increased by \$900,000, being the Applicant’s estimate of the amount necessary to maintain approximately the same level of recovery for General Unsecured Creditors as a consequence of adding the PBGF Assessment Claim into the class of General Unsecured Creditors (using an estimated distribution of about 10 cents-on-the-dollar for the class).²⁸

²³ Aziz Affidavit at para. 31, Motion Record, Tab 2.

²⁴ Aziz Affidavit at para. 32-33, Motion Record, Tab 2.

²⁵ Aziz Affidavit at para. 34, Motion Record, Tab 2.

²⁶ Aziz Affidavit at para. 35, Motion Record, Tab 2.

²⁷ Aziz Affidavit at para. 35, Motion Record, Tab 2.

²⁸ Aziz Affidavit at para. 29(b), Motion Record, Tab 2.

15. The Amended Plan Order provides a mechanism for the determination of the amount of the PBGF Assessment Claim, with the consent of the Applicant and the Superintendent, and the approval of the Monitor, or as otherwise ordered by the Court.²⁹

Other Relief

16. In addition to the amendments to the Plan detailed above, the Amended Plan will incorporate the global contractual release required by USS as a Schedule. It is anticipated that the form of release will be filed with the Court prior to the hearing of the motion.³⁰

17. The Amended Plan also clarifies that five General Unsecured Claims that were assigned to the USS Group will be treated as General Unsecured Claims and compromised under the Amended Plan.³¹

18. The Amended Plan Order sought would also authorize USSC to enter into:

- (a) an agreement that amends the CCAA acquisition and plan sponsor agreement (the “PSA”) dated as of December 9, 2016 between USSC, the Plan Sponsor and Bedrock Industries L.P., as amended (the “**Second PSA Amending Agreement**”); and
- (b) an agreement that amends the support agreement (the “**Province Support Agreement**”) made as of December 9, 2016 between USSC and Her Majesty the Queen in Right of the Province of Ontario (the “**Province**”), as amended, so that

²⁹ Amended Plan Order at para. 16, Motion Record, Tab 4.

³⁰ Aziz Affidavit at para. 36(a), Motion Record, Tab 2.

³¹ Aziz Affidavit at para. 36(b), Motion Record, Tab 2.

it incorporates and applies to the Amended Plan (the “**Second Province Support Amending Agreement**”).³²

19. These agreements simply amend the PSA and the Province Support Agreement to replace the Plan, which is incorporated as a Schedule to both Agreements, with the Amended Plan.³³

20. Finally, the Amended Plan Order contains provisions regarding the treatment of proxies in light of the Amended Plan and deals with more late-filed Claims received by the Monitor.³⁴

PART III—ISSUES

21. The key issues on this motion – each of which the Applicant respectfully submits should be answered in the affirmative – are as follows:

- (a) Should the Settlement Approval Order be granted?
- (b) Should the Amended Plan Order be granted?

PART IV—LAW & ARGUMENT

I. APPROVAL OF SETTLEMENT

Authority of Representative Counsel

22. This Court has recognized the ability of representative counsel to enter into settlements on behalf of their constituencies.³⁵

³² Aziz Affidavit at paras. 46-47, Motion Record, Tab 2; Amended Plan Order at para. 17, Motion Record, Tab 4.

³³ Aziz Affidavit at para. 46, Motion Record, Tab 2; Exhibits F and G to the Aziz Affidavit, Motion Record, Tab 2F and 2G.

³⁴ Aziz Affidavit at paras. 37-39, Motion Record, Tab 2.

23. There is no doubt that Representative Counsel has the authority to represent the individuals affected by the Non-USW Support Agreement and Non-USW Settlement Agreement. Representative Counsel was appointed by Order of this Court on October 8, 2014 to represent any and all members, former members, retired members, surviving spouses or other persons entitled to benefits under (i) the Non-USW Main Pension Plans, (ii) OPEBs who are not represented by USW, (iii) the GRRSP and/or (iv) Retirement Benefit Contracts and Retiring Allowances.³⁶ This broad representation encompasses the Non-USW Main Pension and OPEB Claim holders and the Non-USW Settlement Creditors.

24. The scope and purpose of the appointment is stated as “relating to all matters pertaining to any recovery, compromise of rights or entitlements under the Non-USW Plans and OPEBs... in these CCAA Proceedings.”³⁷ This Order has not been varied or appealed.

25. The Non-USW Main Pension and OPEB Claim holders and the Non-USW Settlement Creditors were given the right to opt out of their representation by Representative Counsel.³⁸ Only five individuals exercised this option.³⁹

Jurisdiction to Approve Settlement Agreements

26. The CCAA is a flexible statute that is skeletal in nature.⁴⁰ It has been described as “a sketch, an outline, a supporting framework for the resolution of corporate insolvencies in the

³⁵ *Grace Canada Inc., Re*, 2008 CarswellOnt 6284 at para. 32 (SCJ) [*Grace*], Brief of Authorities of the Applicant, dated April 19, 2017 (“BOA”), Tab 1; *Nortel Networks Corp. (Re)*, 2010 ONSC 1708 at para. 59 [*Nortel*], BOA, Tab 2.

³⁶ Representative Counsel Order at para. 2, Motion Record, Tab 2B, p. 123.

³⁷ Representative Counsel Order at para. 2, Motion Record, Tab 2B, p. 123.

³⁸ Representative Counsel Order at para. 10, Motion Record, Tab 2B, p. 123.

³⁹ Thirty-Eighth Report of the Monitor.

⁴⁰ *Century Services Ltd., Re*, 2010 SCC 60 at para. 57, BOA, Tab 3.

public interest.”⁴¹ Three sources for the Court’s authority to approve pre-plan agreements have been recognized:

- (a) The power of the court to impose terms and conditions on the granting of a stay under s. 11(4) of the CCAA;
- (b) The power of the court to make an order “on such terms as it may impose” pursuant to s. 11(4) of the CCAA; and
- (c) The inherent jurisdiction of the court to “fill in the gaps” of the CCAA in order to give effect to its objects.⁴²

27. Courts have repeatedly confirmed their jurisdiction to approve transactions, including settlements, during the course of CCAA proceedings prior to any plan of arrangement coming for a vote of creditors.⁴³ Indeed, the Courts have made clear that such settlements are to be encouraged:

[T]he chances of achieving a successful restructuring proceeding increase where the parties can agree on certain issues. Settlement agreements between the parties in these types of proceedings are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight.⁴⁴

28. The Court’s jurisdiction under the CCAA to approve agreements is not limited to preserving the *status quo*, it includes authorizing the company to enter into any agreements that facilitate the restructuring:

⁴¹ *Metcalfe & Mansfield Alternative Investments II Corp., (Re)*, 2008 ONCA 587 at para. 61 [*Metcalfe*], BOA, Tab 4.

⁴² *Nortel* at para. 68, BOA, Tab 2, citing *Canadian Red Cross Society, Re*, 1998 CarswellOnt 3346 at para. 43 (Gen Div) [*Red Cross*], BOA, Tab 5, and *Metcalfe* at para. 44, BOA, Tab 4.

⁴³ See e.g. *Calpine Canada Energy Ltd., Re*, 2007 ABCA 266 at para. 23, BOA, Tab 6; *Nortel* at para. 71, BOA, Tab 2; *Red Cross* at para. 46, BOA, Tab 5; *Grace* at para. 34, BOA, Tab 1.

⁴⁴ *Great Basin Gold Ltd., Re*, 2012 BCSC 1773 at para. 15, BOA, Tab 7.

Section 11 of the CCAA provides a broad jurisdiction to impose terms and conditions on the granting of the stay. In my view, s. 11(4) includes the power to vary the stay and allow the company to enter into agreements to facilitate the restructuring, provided that the creditors have the final decision under s. 6 whether or not to approve the Plan. The court's jurisdiction is not limited to preserving the *status quo*. The point of the CCAA process is not simply to preserve the status quo but to facilitate restructuring so that the company can successfully emerge from the process.⁴⁵

29. This jurisdiction has been confirmed during the course of these proceedings, where this

Court has approved the following agreements, among others:

- (a) A coke conversion agreement between USSC and USS,⁴⁶ and
- (b) Transition arrangements between USSC and several significant stakeholders in the CCAA proceeding.⁴⁷

30. Accordingly, this Court clearly has the jurisdiction to approve the Non-USW Support Agreement and Non-USW Settlement Agreement and make the Settlement Approval Order.

The Agreements Should Be Approved

31. As noted by the Court during these proceedings, in order to determine whether to approve a settlement agreement during CCAA proceedings, the court looks at the following three factors:

- (a) Whether the settlement is fair and reasonable;
- (b) Whether it provides substantial benefits to other stakeholders; and
- (c) Whether it is consistent with the purpose and spirit of the CCAA.⁴⁸

⁴⁵ *Stelco Inc., Re*, 2005 CarswellOnt 6283 at para. 18 (CA), BOA, Tab 8.

⁴⁶ *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 7121, BOA, Tab 9.

⁴⁷ *U.S. Steel Canada Inc. (Re)*, 2015 ONSC 6331 [*USSC Transition Decision*], BOA, Tab 10.

⁴⁸ *USSC Transition Decision* at para. 69, BOA, Tab 10, citing *Sino-Forest Corp. (Re)*, 2013 ONSC 1078 at para. 49.

32. In order to determine whether a settlement agreement is fair and reasonable, the Court considers whether:

- (a) The agreement balances the interests of the parties equitably (although not necessarily equally); and
- (b) The agreement is beneficial to the debtor and its stakeholders generally.⁴⁹

33. Where a settlement agreement is the product of extensive negotiations with representative parties and counsel, it should not be examined and evaluated on a line-by-line basis, and the court should be reluctant to amend or alter its terms.⁵⁰

34. The criteria have been met. The Non-USW Support Agreement and Non-USW Settlement Agreement are fair and reasonable in all the circumstances. The Agreements balance the interests of the parties and other affected constituencies equitably and are beneficial to the Applicant and the Stakeholders generally. Specifically:

- (a) The Non-USW Main Pension and OPEB Claim holders may potentially receive increased OPEB entitlements if USSC agrees to same with USW Local 1005;
- (b) The majority of Non-USW Settlement Creditors will receive a distribution that is greater than they would have received as General Unsecured Creditors under the Plan;
- (c) The Non-USW Settlement Creditors that would benefit from remaining in the Plan and receiving the enhanced distribution available to Convenience Creditors are permitted to do so;

⁴⁹ *Nortel* at para. 31, BOA, Tab 2, citing *Air Canada, Re*, 2003 CarswellOnt 5296 at para. 7.

⁵⁰ *Grace* at para. 74, BOA, Tab 1.

- (d) The estimated distribution of about 10 cents-on-the-dollar to the General Unsecured Creditors contemplated in the Plan will remain the same as the reduction in the General Unsecured Creditors Pool (\$2.5 million) is proportionate to the estimated quantum of the claims being removed from the class (\$25 million); and
- (e) The enrollment of the active salaried employees of USSC who currently participate in a Main Pension Plan in the GRRSP will lead to the following benefits:
 - (i) employment service post-January 1, 2018 will be taken into account when determining eligibility for early retirement under the DB component at the time of the employee's retirement;
 - (ii) an employee's final salary on retirement will be used to calculate the employee's DB pension benefit on retirement; and
 - (iii) the past employment service of the employee will be recognized for the determination of the tiered employer contributions to the employee's account under the GRRSP.⁵¹

35. Most importantly, the Non-USW Support Agreement and Non-USW Settlement Agreement ensure the support of a key stakeholder group, the Non-USW Active and Retiree Beneficiaries excluding Opt-Out Individuals, for the Plan, which is in the best interests of USSC and its broad constituency of stakeholders. The Agreements are thus consistent with the spirit and purpose of the CCAA. They are an important step in permitting the Applicant to implement

⁵¹ Aziz Affidavit at para. 25, Motion Record, Tab 2.

its restructuring and emerge from these proceedings as a competitive, going concern, stand-alone steel manufacturer.

36. Accordingly, the Non-USW Support Agreement and the Non-USW Settlement Agreement should be approved, and the Settlement Approval Order should issue.

II. AMENDED PLAN ORDER

Filing of Amended Plan

37. The threshold for the Court to be satisfied that the Amended Plan ought to be filed and put before the Affected Creditors at the Meetings is low.⁵² The Court must only be satisfied that there is a reasonable chance that the Amended Plan will be accepted by the Affected Creditors.⁵³ The Court is not required to address the fairness and reasonableness or the substantive merits of the Amended Plan until it has been voted upon by the Affected Creditors and presented to the Court at the Sanction Hearing.⁵⁴

38. On March 15, 2017, this Court accepted the filing of the Plan and ordered the calling of the Meetings to permit the Affected Creditors to consider and vote on it.⁵⁵ In doing so, the Court implicitly recognized that there was a reasonable chance that the Plan would be accepted by the Affected Creditors. The Meetings Order and the Plan specifically contemplated that amendments to the Plan may be required prior to the Meetings being conducted.⁵⁶

⁵² *Target Canada Co.*, 2016 ONSC 316 at paras. 66-68, BOA, Tab 11.

⁵³ *Bargain Harold's Discount Ltd. v. Paribas Bank of Canada*, 1992 CarswellOnt 159 at paras. 35-39 (Gen Div), BOA, Tab 12.

⁵⁴ *Nova Metal Products Inc. v Comiskey (Trustee of)*, 1990 CarswellOnt 139 at para. 90 (CA), BOA, Tab 13.

⁵⁵ Aziz Affidavit at paras. 9-11, Motion Record, Tab 2.

⁵⁶ Aziz Affidavit at para. 40, Motion Record, Tab 2.

39. The question on this motion is whether the amendments contemplated in the Amended Plan will have a significant negative impact on the probability that the Amended Plan will be accepted by the Affected Creditors at the Meetings. The amendments in the Amended Plan provide for the following measures that are necessary and desirable in order to effect an orderly restructuring of USSC's business:

- (a) implementing the Non-USW Support Agreement and Non-USW Settlement Agreement;
- (b) incorporating the PBGF Assessment Claims as General Unsecured Claims; and
- (c) incorporating the global mutual release as a schedule to the Amended Plan.⁵⁷

40. The amendments to implement the Non-USW Support Agreement and Non-USW Settlement Agreement ensure the support of this group of stakeholders for the Amended Plan and are not adverse to the interests of the other Affected Creditors or other Stakeholders for the reasons set out at paragraphs 33-34 above.

41. The amendments to incorporate the PBGF Assessment Claims will not impact the support of the other Affected Creditors for the Amended Plan as the estimated distribution of about 10 cents-on-the-dollar to the General Unsecured Creditors contemplated in the Plan will remain the same as the increase in the General Unsecured Creditors Pool (~\$900,000) is proportionate to the estimated quantum of the claims being added to the class (~\$9 million).⁵⁸

42. The amendments to incorporate the global release as a schedule to the Plan simply provides greater certainty as to the terms of the release to be executed and delivered by the

⁵⁷ Aziz Affidavit at paras. 28-36, Motion Record, Tab 2.

⁵⁸ Aziz Affidavit at paras. 29(b), 34, Motion Record, Tab 2.

relevant parties on the Plan Implementation Date. The Plan currently contemplates that a global mutual release will be entered into by USS, USSC and the various Stakeholders, among others, but does not provide the form of that release.⁵⁹

43. As a result, the amendments contemplated in the Amended Plan, if anything, only serve to increase the likelihood that the Amended Plan will be approved by the Affected Creditors. Accordingly, filing of the Amended Plan should be accepted.

Approval of Creditor Classes

44. In the Meetings Order this Court approved the classification of creditors in the Plan for the purposes of voting at the Meetings. The Amended Plan simply removes the Non-USW Settlement Creditors from the definition of General Unsecured Creditors and adds the PBGF Assessment Claim, with proportional adjustments to the General Unsecured Creditors Pool to ensure no effect on recovery.⁶⁰ Accordingly, the revised classes should be approved.

Notice of Amended Plan

45. A Supplemental Information Circular setting out the amendments contemplated in the Amended Plan has been prepared (the “**First Supplemental Information Circular**”).⁶¹ The First Supplemental Information Circular attaches the Amended Plan as an exhibit.⁶²

⁵⁹ Aziz Affidavit at para. 36(a), Motion Record, Tab 2.

⁶⁰ Aziz Affidavit at paras. 28-29(b), Motion Record, Tab 2.

⁶¹ Aziz Affidavit at para. 42, Motion Record, Tab 2.

⁶² Exhibit E to the Aziz Affidavit, Motion Record, Tab 2, p. 153.

46. The Monitor will be sending a letter to all General Unsecured Creditors on April 20, 2017 (seven days prior to the Meetings) informing them that the draft First Supplemental Information Circular and the Thirty-Eighth Report of the Monitor are available on the Monitor's Website.⁶³

47. In addition, Representative Counsel will be sending a letter to all Non-USW Settlement Creditors advising them of the Non-USW Support Agreement, the Non-USW Settlement Agreement and the proposed Amended Plan and of the date for the hearing of this motion.⁶⁴

48. Finally, if the Orders are granted, the Monitor will post the Amended Plan, the First Supplemental Information Circular, the Orders and the above-noted letters from the Monitor and Representative Counsel on the Monitor's Website as soon as reasonably practicable, and in any event prior to the Meetings.⁶⁵

49. Accordingly, the Affected Creditors will receive adequate notice of the Amended Plan that will permit them to vote on it in an informed manner at the Meetings on April 27, 2017.

PSA and Support Agreement Amendments

50. The Plan is incorporated as a Schedule to the PSA, as amended, and the Province Support Agreement, as amended.⁶⁶ The Second PSA Amending Agreement and the Second Province Support Amending Agreement USSC simply seek to replace the Plan with the Amended Plan. The Court should exercise its jurisdiction to authorize USSC to enter into these agreements.

⁶³ Aziz Affidavit at para. 43(a), Motion Record, Tab 2.

⁶⁴ Aziz Affidavit at para. 43(b), Motion Record, Tab 2.

⁶⁵ Aziz Affidavit at paras. 44-45, Motion Record, Tab 2.

⁶⁶ Aziz Affidavit at para. 46, Motion Record, Tab 2.

PART V—RELIEF SOUGHT

51. For the reasons set out above, the Applicant requests that this Court grant relief by making orders substantially in the forms of Order included at Tabs 3 and 4 of its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of April, 2017.



McCarthy Tétrault LLP

Lawyers for U. S. Steel Canada Inc.

**SCHEDULE “A”
LIST OF AUTHORITIES**

Jurisprudence

1. *Bargain Harold’s Discount Ltd. v. Paribas Bank of Canada*, 1992 CarswellOnt 159 (Gen Div)
2. *Calpine Canada Energy Ltd., Re*, 2007 ABCA 266
3. *Canadian Red Cross Society, Re*, 1998 CarswellOnt 3346 (Gen Div)
4. *Century Services Ltd., Re*, 2010 SCC 60
5. *Grace Canada Inc., Re*, 2008 CarswellOnt 6284 (SCJ)
6. *Great Basin Gold Ltd., Re*, 2012 BCSC 1773
7. *Metcalfe & Mansfield Alternative Investments II Corp., (Re)* , 2008 ONCA 587
8. *Nortel Networks Corp. (Re)*, 2010 ONSC 1708
9. *Nova Metal Products Inc. v Comiskey (Trustee of)*, 1990 CarswellOnt 139 (CA)
10. *Stelco Inc., Re*, 2005 CarswellOnt 6283 (CA)
11. *Target Canada Co.*, 2016 ONSC 316
12. *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 7121
13. *U.S. Steel Canada Inc. (Re)*, 2015 ONSC 6331

**SCHEDULE “B”
RELEVANT STATUTES**

Companies' Creditors Arrangement Act, RSC 1985, c C-36

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO U. S. STEEL CANADA INC.

Court File No. CV-14-10695-00CL

**ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

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