Court File No. CV-10-8561-00CL

**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 SIGNATURE ALUMINUM CANADA INC.

Applicant

# FACTUM OF THE APPLICANT
**(Sanction Hearing on June 11, 2010)**

## PART I – OVERVIEW

1. The Applicant, Signature Aluminum Canada Inc. ("Signature" or the "Applicant") seeks an Order sanctioning its second amended and restated plan of compromise and arrangement dated June 7, 2010 (as may be further amended, restated or replaced from time to time, the "Plan").

2. The Monitor supports the sanctioning of the Plan, and the Plan was approved by the Applicant's creditors at the meeting of creditors held on June 8, 2010 (the "Creditors' Meeting").

3. The Applicant respectfully submits that the relief sought is appropriate as:

(i) The Plan is fair and reasonable;

(ii) The Applicant has strictly complied with all statutory requirements and has adhered to previous orders of the Court in these proceedings; and

(iii) Nothing has been done or purported to be done by the Applicant that is not authorized by the CCAA.

4. The sanctioning of the Plan will allow the Applicant's business to continue as a going concern for the benefit of all stakeholders including the Applicant's employees, creditors, suppliers and customers.

## PART II – THE FACTS

### History of the CCAA Proceedings

5. Signature carries on business as a manufacturer of customized, made-to-order aluminum extrusions.[1]

6. On January 29, 2010 (the "Filing Date"), the Applicant filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to an order (the "Initial Order") of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court"). The Initial Order granted, *inter alia*, a stay of proceedings against the Applicant and appointed FTI Consulting Canada Inc. as Monitor (the "Monitor").[2] The Initial Order also approved a DIP Term Sheet dated January 28, 2010 between Signature and Biscayne Metals Finance, LLC (a related party and pre-filing secured creditor of the Applicant) ("Biscayne"). The proceedings commenced by the Applicant under the CCAA will be referred to herein as the "CCAA Proceedings".

7. At the time of the commencement of the CCAA Proceedings, Signature was in a financial crisis and in need of immediate relief from its creditors. Signature was subject to decreased demand, decreased order sizes, deteriorating pricing and high volatility due largely to the global economic recession.[3] In the view of Signature and its key stakeholders, its finances and operations had to be restructured in order for Signature to avoid a complete liquidation and continue as a viable going concern enterprise.[4]

8. Signature concluded that its existing cost structure was unsustainable and given its debt obligations and on-going losses, operations at two of Signature's facilities

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[1] Affidavit of Parminder Punia sworn June 9, 2010 (the "Punia Affidavit") at para 3.
[2] The Fifth Report of the Monitor dated June 9, 2010 (the "Fifth Report") at para 1.
[3] Punia Affidavit at para 5.
[4] Punia Affidavit at para 6.

located in Richmond Hill, Ontario (the "Richmond Hill Plant") and St. Therese, Quebec (the "St. Therese Plant") could not be maintained within Signature's current business model. Signature anticipated that unless significant reductions in labour costs, together with improvements in volume and pricing, could be obtained, Signature's operations would have to be rationalized to a single plant, most likely its operating facility in Pickering, Ontario (the "Pickering Plant"), Signature's most modern facility.[5]

9. Signature entered into a Plan Support Agreement (the "PSA") dated January 28, 2010, as amended, pursuant to which Biscayne provided a commitment to support the contemplated restructuring of the Applicant's business and operations through either the sponsorship of a plan of compromise and arrangement or, at its option and together with 3241715 Nova Scotia Limited (the direct owner of Signature), the acquisition of the Applicant's assets in accordance with the form of asset purchase agreement (the "Credit Bid") attached to the PSA.[6]

10. The PSA contemplated that prior to filing the Plan or seeking approval of the Credit Bid, Signature would first seek to market its business and assets to determine if a going concern purchaser could be identified which would provide greater value to the Applicant's stakeholders as a whole, than was contemplated by the Credit Bid (i.e. the baseline offer for the assets). Accordingly, as part of the application for the Initial Order, Signature submitted to the Court for approval a "Marketing Process" (as defined in the Initial Order) for the sale of its business and assets. Signature retained an experienced investment banking firm that conducted an exhaustive search for a going concern buyer. As set out in the Monitor's Second Report dated March 15, 2010, the investment banking firm contacted 98 potentially interested parties, including both potential financial sponsors and strategic buyers. The Monitor oversaw the Marketing Process.[7]

11. As the Marketing Process was being conducted, restructuring efforts were undertaken at all levels. Management staff was reduced, unproductive lines were discontinued and overhead costs were rationalized. Signature also sought concessions from

[5] Punia Affidavit at para 7.
[6] Punia Affidavit at para 8.
[7] Punia Affidavit at para 9.

the bargaining units at each of its Plants and obtained a number of critical concessions from the unionized employees at the Pickering Plant.[8]

12. During the Marketing Process the Richmond Hill Plant and the St. Therese Plant remained on an extended holiday shut down which had commenced in mid-December. Any interested bidders were required to indicate whether they were prepared to re-start operations at the Richmond Hill Plant and the St. Therese Plant, and continue operations at the Pickering Plant. Unfortunately, no offers were submitted by the "Final Bid Deadline" of April 6, 2010.[9]

13. As going concern offers were not received by the Final Bid Deadline, the employees at the Richmond Hill Plant and St. Therese Plant were placed on permanent layoff. The Superintendent for Financial Services of Ontario also ordered the wind-up of the pension plan relating to former unionized personnel at the Richmond Hill Plant and the pension plan relating to former salaried employees, and appointed Morneau Sobeco as administrator (Morneau Sobeco was subsequently appointed to wind up the balance of the salaried plan). The pension plan applicable to the St. Therese Plant is also being wound up in accordance with applicable Québec laws.[10]

**The Plan**

14. As no buyer was identified, with the support of Biscayne, Signature sought and obtained an Order authorizing the Applicant to file the Plan and to call and hold a meeting of creditors to consider and vote on the Plan (the "Creditors' Meeting Order"). Biscayne funded Signature's payment of the "Plan Support Fund" of $1,925,000 under the DIP Term Sheet (no other amounts are owing under the DIP Term Sheet). This represented an increase of $425,000 over the initial $1,500,000 which Biscayne initially agreed to fund under the PSA.[11]

15. Other than employees that may receive payment with respect to unpaid severance and/or termination pay pursuant to the Wage Earner Protection Program and a

[8] Punia Affidavit at para 10.
[9] Punia Affidavit at paras 11&12.
[10] Punia Affidavit at para 13.
[11] Punia Affidavit at para 14.

potential payment to Signature's wound up Ontario pension plans from the Ontario Pension Benefit Guarantee Fund, the Monitor concluded that unsecured creditors would receive no recovery in a bankruptcy. The Monitor also noted that the Plan provided for continued operations at the Pickering Plant providing additional benefit to employees, suppliers and customers.[12]

16. On June 7, 2010, the Plan was amended to take into account the rescheduling of the Creditors' Meeting and the Plan Termination Date was correspondingly extended from June 7th to June 18th.

17. Additionally, the definition of "Base Distribution" in the Plan was amended. The version of the Plan originally filed provided that the Base Distribution would include 50% of claims between $1000 and $4750; the amended CCAA Plan now provides that this distribution will include 50% of claims between $1000 and $5750. This change is consistent with the calculation that was included in the Third Report of the Monitor that was filed with the Plan[13], and therefore will not effect the intended distributions as they were originally disclosed.

18. If the Plan is sanctioned by the Court, Signature will continue operations at the Pickering Plant which employs approximately 150 people.[14]

19. Signature also conducts significant business with approximately 20 local suppliers, which Signature anticipates will result in approximately $5.5 million in annual purchases, on a go forward basis, from the local Pickering community.[15]

20. As noted above, Signature has made several internal operational improvements to increase productivity and efficiency. Signature believes the support of the local Pickering union members was critical in implementing a successful operational restructuring. In Signature's view, its lenders, its employees, its ownership and its major stakeholders are

[12] Punia Affidavit at para 16
[13] Fifth Report at para 12
[14] Punia Affidavit at para 22
[15] Punia Affidavit at para 23

committed to the successful implementation of the Plan and the continuation of the Pickering Plant as a going concern enterprise.

**Creditor Classification**

21. The Plan was voted on by the Eligible Voting Creditors[16] voting in one class of unsecured creditors. The Affected Creditors were grouped in a single class in accordance with the Creditors' Meeting Order, with no objections from the Creditors. The Monitor believes that such Creditors have a commonality of interest and that the classification is appropriate in the circumstances.[17]

**The Meeting**

22. On or about May 14, 2010 and in accordance with the Creditors' Meeting Order, the Monitor sent all of the Eligible Voting Creditors copies of the Plan, the Creditors' Meeting Order, a copy of the Monitor's Third Report, Notice of Creditors' Meeting, and the form of proxy (the "Information Package").[18] Notice of the Creditors' Meeting was also published in the Globe & Mail (National Edition) and La Presse on May 18, 2010, and was posted on the Monitor's website.[19]

23. The Creditors' Meeting was originally scheduled for June 1, 2010 but was adjourned to June 8, 2010 in accordance with the Creditors' Meeting Order.[20] The Creditors' Meeting was held on June 8, 2010 and was chaired by Nigel Meakin, a representative of the Monitor.[21] The Creditors' Meeting was held in accordance with the procedures established by the Creditors' Meeting Order.[22]

24. 410 Eligible Voting Creditors representing C$29,122,625.68 of Affected Claims were present in person or by proxy at the meeting. A total of 252 Eligible Voting Creditors representing C$19,974,399.35 in Proven Claims voted their Proven Claims in favour

[16] Terms not otherwise defined herein will have the meaning given to them in the Plan.
[17] Fifth Report at para 32.
[18] Fifth Report at para 14.
[19] Fifth Report at para 14.
[20] Fifth Report at para 7.
[21] Fifth Report at para 16.
[22] Fifth Report at para 16.

of the Plan. This represented 61.76% in number of Proven Creditors holding 74.38% in value of Proven Claims present and voting in person or by proxy at the meeting.[23] The votes cast by Eligible Voting Creditors with Disputed Claims did not affect the outcome of the vote.[24]

25. The Monitor believes that the Plan is in the best interests of the creditors. Accordingly, the Monitor recommends the sanctioning of the Plan.[25]

## PART III – THE LAW AND ARGUMENT

### Test for Sanctioning a Plan under the CCAA

26. Section 6 of the CCAA provides that the court may sanction a plan if a majority in number representing two-thirds in value of each class of creditors voting at meetings of creditors held pursuant to sections 4 and 5 of the CCAA agree to such plan; if sanctioned by the court, the plan is binding on the company and the affected creditors.

27. Therefore pursuant to section 6 of the CCAA, in order for the Plan to be binding on the Applicant and the Creditors, two conditions must be met: (i) approval of the Plan by the creditors, in the requisite majorities and (ii) approval and sanction by the court.[26] The required majorities of Affected Creditors entitled to vote and present at the Creditors' Meeting either in person or by proxy voted in favour of the Plan. Accordingly, the sole issue to be determined is whether this Court should approve and sanction the Plan.

28. Subject to certain limitations described below, the exercise of the court's statutory authority to sanction a compromise or arrangement under the CCAA is a matter of discretion. The general principles to be applied by the court in exercising its discretion whether to sanction a plan of compromise or arrangement under section 6 are well established. The Applicant must establish that:

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[23] Fifth Report at para 19.
[24] Fifth Report at para 20.
[25] Fifth Report at paras 34 & 41.
[26] *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 175 (B.C.S.C.) at para. 23, aff'd (1989), 73 C.B.R. (N.S.) 195 (B.C.C.A.) ["*Re Northland Properties Ltd.*"]

(a) there has been strict compliance with all statutory requirements and adherence to previous orders of the court;

(b) nothing has been done or purported to be done that is not authorized by the CCAA; and

(c) the Plan is fair and reasonable.[27]

**(a) Compliance with Statutory Requirements**

29. When considering whether the Applicant has acted in compliance with statutory requirements, the court may consider the following matters:

(a) the applicant comes within the definition of "debtor company" in section 2 of the CCAA;

(b) the applicant or affiliated debtor companies have total claims within the meaning of section 12 of the CCAA in excess of $5,000,000;

(c) the notice calling the meeting was sent in accordance with the order of the court;

(d) the creditors were properly classified;

(e) the meeting of creditors was properly constituted;

(f) the voting was properly carried out; and

(g) the plan was approved by the requisite double majority.[28]

30. In this case, the Applicant has met all of these statutory requirements, specifically:

(a) The Applicant is an insolvent company and thus is a "debtor company" within the meaning of section 2 of the CCAA; [29]

(b) The Applicant has total claims that would be claims provable in bankruptcy within the meaning of section 12 of the CCAA in excess of $5,000,000; [30]

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[27] *Re Northland Properties Ltd.*, at para. 24.
[28] *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) ["*Canadian Airlines*"] at para. 62, leave to appeal denied (2000), 20 C.B.R. (4th) 46 (Alta. C.A.).
[29] Order of the Honourable Mr. Justice Morawetz, dated January 29, 2010, at para. 2

(c) In accordance with the Creditors' Meeting Order, Information Packages were sent to all Eligible Voting Creditors on or prior to May 14, 2010;[31]

(d) The Creditors were classified in accordance with the Creditors' Meeting Order with no objections from the Creditors;[32]

(e) The Creditors' Meeting was properly constituted;[33]

(f) the voting was properly carried out;[34] and

(g) the Plan was approved by the requisite double majorities of creditors present at the Creditors' Meeting in person or by proxy.[35]

31. In addition, pursuant to certain recent amendments, the CCAA also provides that the court may only exercise its statutory authority to sanction a compromise or arrangement under the CCAA if:

(a) a plan provides for the payment in full, within six months, of all amounts owed to the Crown as of the filing date in respect of source deductions under s. 224(1.2) of the *Income Tax Act*, and any provision of the *Canada Pension Plan* or the *Employment Insurance Act* that refers to s.224(1.2) and provides for the collection of a contribution, as defined in the Canada Pension Plan, or equivalent provincial legislation (unless the Crown agrees otherwise) ("Required Crown Claims");

(b) a plan provides for the payment of wages, salaries, commissions or compensation for services rendered on the day that is six months before the filing date (to the extent of $2,000), and any such amounts owing after the filing date and before the court sanction the plan (unless the court is satisfied that the debtor company can and will make such payments) ("Required Employee Wage Claims"); and

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[30] Affidavit of Parminder Punia, sworn January 28, 2010
[31] Fifth Report at para. 14
[32] Fifth Report at para. 32
[33] Fifth Report at para. 16-22
[34] Fifth Report at para. 16-22
[35] Fifth Report at para. 20

(c) a plan provides for the payment of specific pension obligations outstanding at the date of the hearing to sanction the plan; specifically contributions deducted from employee's remuneration but not remitted to the pension fund and certain other normal cost payments and defined contributions, as applicable (the "Required Pension Claims");[36]

32. Furthermore, no plan is to be sanctioned by the court if, as of the date of the initial order, the Crown satisfies the court that the company is in default on any remittances of Required Crown Claims after the filing date.[37]

33. Pursuant to section 6(8) of the CCAA, no compromise or arrangement that provides for a payment of an equity claim may be sanctioned by the court unless all non-equity claims are paid in full.

34. The foregoing requirements are satisfied in this case as:

(a) Section 3.5 of the Plan provides that the Required Crown Claims will remain unaffected and that the necessary payments will be made within six months of sanction.

(b) There are no unpaid claims of employees of the nature referred to in section 6(5) of the CCAA and there are no normal course pension payments outstanding of the kind referred to in section 6(6) of the CCAA. However, the proposed Sanction Order provides for the payment of such amounts if for any reason such amounts are later determined to be outstanding.[38]

(c) The Plan does not provide for any payment on account of equity claims.

35. As a result of the foregoing, the Applicant has complied with all statutory requirements.

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[36] CCAA at s. 6(3), 6(5) and 6(6).
[37] CCAA s. 6(4).
[38] Fifth Report at para 27.

**(b) No Unauthorized Steps**

36. All materials filed and procedures taken by the Applicant were authorized under the CCAA, and Orders of this Court.[39] All amendments to the Plan were served on the Applicant's service list, filed with the Court and posted on the Monitor's website in accordance with the terms of the Creditors' Meeting Order and the terms of the Plan.[40]

**(c) The Plan is Fair and Reasonable**

37. Where a plan has been approved by the requisite majority of creditors, there is a very heavy burden on parties seeking to show that the plan is not fair and reasonable.[41]

38. When considering whether a plan is fair and reasonable, the court is called upon to weigh the equities or balance the relative degrees of prejudice that would flow from granting or refusing the relief sought under the CCAA.[42] However, the court does not require perfection, nor will the court second-guess the business decision reached by the stakeholders of debtors as a body.[43] As stated by Blair J. (as he then was) in *Olympia & York*:

> As other courts have done, I observe that it is not my function to second guess the business people with respect to the "business" aspects of the Plan, descending into the negotiating arena and substituting my own view of what is a fair and reasonable compromise or arrangement for that of the business judgment of the participants. The parties themselves know the best what is in their interest in those areas.[44]

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[39] Fifth Report at paras 29 & 30.
[40] Fifth Report at para 13.
[41] *Re Olympia & York Developments Ltd.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.) ["*Olympia & York*"], at para. 39.
[42] These considerations are the same where a plan contains third party releases. See e.g. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (C.A.) ["*ABCP*"], leave to appeal denied 2008 CarswellOnt 5432, where the Ontario Superior Court's sanction of a plan containing third party releases was approved by the Court of Appeal for Ontario. Similar to the case in *ABCP*, in the Signature Plan the releases of Biscayne and certain related parties are a condition of, and consideration for, the funding of the Plan by Biscayne (see the Third Report of the Monitor dated May 5, 2010 ("Third Report") at paragraph 38(i)), the Plan benefits Signature's creditors generally, the Eligible Voting Creditors were aware of the releases when voting for the Plan (the releases are explicitly included in the Plan and were disclosed in the Third Report) and the releases are not unfair, unreasonable, overly broad or offensive to public policy.
[43] *Re T. Eaton Co.* (1999), 15 C.B.R. (4th) 311 (Ont. S.C.J. [Commercial List]) at para. 4.
[44] *Olympia & York* at para. 37

39. The fairness analysis undertaken by the courts is an inquiry into fairness to the broad constituency of a debtor company's creditors and stakeholders. The inquiry is not limited to any single creditor or creditor constituency.[45]

40. In sanctioning a plan that received the support of 65% of creditors in number representing 76% in value,[46] Madam Justice Paperny of the Alberta Court of Queens Bench (as she then was) identified certain factors as relevant to the court's consideration of whether a plan is fair and reasonable. These factors, as applied to this case, are as follows:[47]

(a) The composition of the unsecured vote

The Plan was voted on by the Eligible Voting Creditors voting in a single class of unsecured creditors, grouped in accordance with the Creditors' Meeting Order without objections from the Creditors. Further, the Monitor believes that the Creditors have a commonality of interest and that the classification is appropriate.[48]

(b) What creditors would receive on liquidation or bankruptcy as opposed to the Plan

Signature's senior secured creditors face a significant shortfall on their claims in the event of a liquidation or bankruptcy, and accordingly the implementation of the Plan is the only scenario under which Creditors with Affected Claims would receive any recovery on account of such Claims equal to or greater than what certain Affected Creditors may be entitled to in a liquidation or bankruptcy.[49]

(c) Alternatives available to the Plan and bankruptcy

As a result of the absence of binding offers following the Marketing Process, there are no viable alternatives to the Plan that could result in higher recoveries for Affected Creditors.[50]

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[45] *Skeena Cellulose Inc., Re.* (2003), 43 C.B.R. (4th) 187 (B.C.C.A.) at para 60.
[46] *Canadian Airlines*, at para 99.
[47] *Canadian Airlines*, at para 96.
[48] Fifth Report at para 32. See also *Re Uniforet Inc.*(2002), 40 C.B.R. (4th) 251 (Que. S.C.), leave to appeal refused (2002), 40 C.B.R. (4th) 281 (Que. C.A.), where the court found that the use of a convenience class was commonly used and was perfectly acceptable.
[49] Fifth Report at paras 33 & 34.
[50] Fifth Report at para 35.

(d) Oppression

The Plan provides for greater recoveries for Affected Creditors than any alternatives; there is accordingly no apparent oppression that would arise from the implementation of the Plan.[51]

(e) Unfairness to shareholders

Signature's sole shareholder has consented to the Plan and its equity rights are unaffected by this going concern solution; accordingly, the Plan is more favourable to the shareholder than any other current alternative.

(f) The public interest

The implementation of the Plan is in the public interest: the Plan will preserve over 150 jobs, will result in approximately $5.5 million in annual purchases in the Pickering community and will provide an ongoing benefit to employees, suppliers and customers.[52] Moreover, there is nothing in respect of the implementation of the Plan that is contrary to the public interest.[53]

41. It is respectfully submitted that the Plan is fair and reasonable and ought to be sanctioned for all of the reasons stated herein, including, *inter alia*, the following:

(a) The Plan was approved at the Creditors' Meeting by Creditors, in excess of the statutory requirements. This creditor support deserves deference.

(b) The only realistic alternatives to the Plan are a bankruptcy of the Applicant or a going concern sale by way of the Credit Bid, both of which would result in no recovery for unsecured creditors, other than employees who may receive WEPPA payments but who stand to gain more from the Plan than they would receive in a bankruptcy.

(c) The Monitor recommends the sanctioning of the Plan.

(d) The Plan will preserve over 150 jobs, result in approximately $5.5 million in annual purchases in the local Pickering community and provide ongoing benefit to employees, suppliers and customers.

[51] Fifth Report at para 36.
[52] Punia Affidavit at paras 22 & 23.
[53] Fifth Report at para 39.

**PART IV – RELIEF REQUESTED**

42. The Applicant therefore requests that this motion be granted and that a sanction order be made in the draft form attached to the Notice of Motion.

All of which is respectfully submitted,

Linc Rogers/Katherine McEachern/Jackie Moher of
Counsel for the Applicant

## SCHEDULE "A"

## AUTHORITIES REFERRED TO

1. *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 175 (B.C.S.C.).
2. *Re Northland Properties Ltd.* (1989), 73 C.B.R. (N.S.) 195 (B.C.C.A.).
3. *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.).
4. *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4th) 46 (Alta. C.A.).
5. *Re Olympia & York Developments Ltd.* (1993), 17 C.B.R. (3d) 1 (Ont. Ct. J. (Gen. Div.).
6. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.* (2008), 45 C.B.R. (5th) 163 (C.A.).
7. *Skeena Cellulose Inc., Re.* (2003), 43 C.B.R. (4th) 187 (B.C.C.A.).
8. *Re T. Eaton Co.* (1999), 15 C.B.R. (4th) 311 (Ont. S.C.J. [Commercial List]).
9. *Re Uniforet Inc.*(2002), 40 C.B.R. (4th) 251 (Que. S.C.).

## SCHEDULE "B"

## LEGISLATION

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

**2.** "debtor company"

"debtor company" means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

**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.

**5.** Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or 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.

**6.** (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under 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 that 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.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accord- ance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(*a*) subsection 224(1.2) of the *Income Tax Act*;

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(*c*) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(*a*) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(*d*) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(*b*) the court is satisfied that the company can and will make the payments as required under paragraph (*a*).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(*a*) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament; and

(*b*) the court is satisfied that the company can and will make the payments as required under paragraph (*a*).

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Court File No. CV-10-8561-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., 1985 c. C-36
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SIGNATURE ALUMINUM CANADA INC.

Applicant

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

Proceeding commenced at Toronto

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