

CITATION: U.S. Steel Canada Inc. (Re), 2015 ONSC 6331

COURT FILE NO.: CV-14-10695-00CL

DATE: 20151014

SUPERIOR COURT OF JUSTICE - ONTARIO

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.

BEFORE: Mr. Justice H. Wilton-Siegel

COUNSEL: *R. Paul Steep, J. Gage, S. Kour, K. Peters, E. Brown and S. Shamie*, for the
Applicant

M. Barrack, R. Thornton, K. Patel, M. Shapiro, M. Shakra and T.J. Cornetti, for
United States Steel Corporation

G. Capern, L. Harmer, D. Cooney and D. Rosenbluth, for the United Steel
Workers Union and USW Local 8782

S. White and I. Hammond, for the United Steel Workers Union Local 1005

A. Mark, G. Rubenstein and T. Jacobson, for the Province of Ontario

A. Hatnay, A. Scotchmer and B. Walancik, as Representative Counsel for the non-
unionized active employees and retirees

D. Lezau, for the City of Hamilton

P. Mahoney, for the County of Haldimand

R. Staley and K. Zych, for the Monitor, Ernst & Young Inc.

L. Brzezinski, for Robert and Sharon Milbourne

S. M. Citak, for Eramet & Gulf Metallurgical Corporation

M. Wasserman and P. Riesterer, for Brookfield Capital Partners Ltd.

HEARD: October 7 and 8, 2015

REASONS FOR DECISION

[1] In this hearing, there were three principal motions before the Court addressing a number of interrelated matters which are critical for the future of the Applicant, U.S. Steel Canada Inc.

(“USSC”), and the continuation of its restructuring activities in these proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”). On October 9, 2015, the Court issued a short endorsement stating that, for written reasons to follow, the three motions before the Court were approved. These Reasons for Decision set out the Court’s written reasons for such approval.

Background

[2] USSC is an indirect, wholly-owned subsidiary of United States Steel Corporation (“USS”). USS acquired USSC in October 2007.

[3] USSC is an integrated steel manufacturer. It conducts most of its business from two large steel plants located in Ontario: the Hamilton Works and the Lake Erie Works.

[4] The Lake Erie Works are located near Nanticoke, Ontario on the shores of Lake Erie. The Lake Erie Works consist of an integrated steel mill with an annual capacity of approximately 2.7 million tons of raw steel production, although the plant is currently producing at an annualized rate of approximately 1.8 to 2.0 million tons of raw steel, depending on market conditions. The principal operations of the Lake Erie Works include coke making (the process whereby metallurgical coal is converted into coke by baking the coal in coke ovens), iron and steelmaking (the process whereby coke is combined with iron ore and limestone in a blast furnace and ultimately combined with scrap metal and injected with oxygen to produce liquid steel and then processed into slabs) and finishing (the process whereby slabs are rolled on a hot strip mill and formed into steel sheet and then rolled into coils). The plant also operates a pickling line finishing facility, a process whereby the hot rolled coils are cleaned by running them through an acid solution.

[5] The Hamilton Works are located in Hamilton, Ontario. The Hamilton Works steelmaking operations were permanently shut down in 2013 after being idle since 2010. The plant’s operations now consist of certain finishing lines, which are used to further process steel to meet specific customer requirements. These lines include a cold reduction mill (which forms hot rolled steel into thinner gauges of steel for end customer use, referred to as cold-rolled steel) and two galvanizing lines referred to as the “Z-line” (which add zinc to the cold-rolled steel). A significant quantity of the hot rolled coils produced at the Lake Erie Works is shipped to the Hamilton Works for further finishing before sale to end customers. USSC idled production of coke at the Hamilton Works commencing October 31, 2014, as it had produced enough coke to supply the Lake Erie Works steelmaking operations until April 2015. Coke production resumed on March 31, 2015, pursuant to an agreement between USSC and USS dated December 4, 2014, as amended, which was approved by order of the Court dated December 5, 2014 (the “Coke Conversion Agreement”).

[6] One of the key drivers of USSC’s revenue and cash flow is automotive-related production and finishing work that is allocated by USS to USSC mills as described below. USSC currently produces and sells two types of product to USS’s automotive customers: (1) cold-rolled full hard coils (“cold roll”), which are used as substrate to be finished by galvanizing lines downstream in the production process before being sold to automotive manufacturers; and (2) hot-dipped galvanized sheet steel, which involves coating the cold roll with zinc using the Z-line

at the Hamilton Works, thereby making the steel suitable for automotive applications. In addition to producing hot-dipped galvanized steel for automotive manufacturers, the Z-line at the Hamilton Works also has the capacity to produce non-automotive steel products.

The CCAA Proceedings

[7] USSC filed for, and obtained, protection under the CCAA on September 16, 2014 (the “Filing Date”) pursuant to an order of Morawetz R.S.J. (as subsequently amended and restated, the “Initial Order”).

[8] USS has filed secured and unsecured claims totaling approximately \$2.2 billion against USSC. Certain stakeholders are challenging the characterization of a large portion of these claims as debt rather than equity in the Claims Process established in these CCAA proceedings. The Court has yet to make any determination regarding these objections. In addition to its debt claims, USS has invested over \$2.3 billion in equity in USSC.

[9] USSC obtained DIP financing from USS from the Filing Date until August 4, 2015, pursuant to an agreement between USSC and USS (the “USS DIP Financing”). On that date, Brookfield Capital Partners Ltd. (“Brookfield”) replaced USS as the DIP lender pursuant to a term sheet between Brookfield and USSC dated July 24, 2015 (the “DIP Financing”), as approved by an order of the Court of the same date (the “Replacement DIP Financing Order”). USSC cannot currently draw funds under the DIP Financing as a result of the material adverse developments in its affairs described below.

[10] With the assistance of its Financial Advisor, USSC has undertaken an extensive sales and restructuring process (the “SARP”), pursuant to the terms of an order dated April 2, 2015 of this Court (the “SARP Order”). USSC advised the stakeholders in early September 2015 that, given the bids received in the SARP and the position of stakeholders from whom contributions or compromises would be required to satisfy the conditions of the bids, USSC does not have a SARP transaction with which it can proceed. Nor is there a consensual restructuring solution among the principal stakeholders, despite the Court-mandated mediation described below.

[11] The Court understands that, throughout the period in which the SARP was conducted, global steel markets have been very challenging with demand and pricing remaining weak. These market conditions appear to have impacted the terms of the bids received by USSC in the SARP, as well as the conditions proposed by prospective purchasers.

The Operating Relationship Between USS and USSC

[12] It is important for these motions to set out the manner in which USS has organized and conducted the business of USSC since its acquisition in 2007, as well as the economic circumstances in which USSC is currently operating and that have given rise to these motions.

[13] Prior to the USS acquisition of the company in 2007, Stelco Inc. was an independent company with responsibility for its own governance, administration, sales and operations. Following the acquisition, USS changed the corporate name to USSC and integrated USSC into USS, with the result that all principal operational functions and major decisions have been

centralized, including: (1) cash management, including treasury services, accounts receivable and accounts payable administration; (2) operational services in respect of production scheduling (plant loading), sales and general procurement; (3) management of a number of employee functions, including compensation and benefits, recruiting services and the administration of pension and benefit plans; (4) IT, tax, accounting and internal audit services; and (5) strategic planning, insurance, research and engineering services.

[14] In particular, USS currently provides services to USSC pursuant to the following four principal agreements: (1) a corporate services agreement dated November 1, 2007 governing the provision to USSC of, among other things, financial and accounting services, corporate strategic planning services, tax planning services and audit services; (2) a business services agreement dated January 1, 2014 among USS, USSC and U.S. Steel Kosice, s.r.o. (“USSK”) concerning certain IT and related services and financial transaction processing services; (3) an ERP cost sharing agreement dated November 19, 2009, as amended, among USS, USSC, USSK and U.S. Steel Serbia, D.O.O. which divides the costs relating to the Enterprise Resource Planning computer software systems; and (4) a retirement plan administration services agreement among USS, Carnegie Pension Fund and USSC dated August 5, 2008, which provides for the provision of investment management and administrative and actuarial services by Carnegie Pension Fund to USSC’s registered and non-registered pension plans. These agreements are collectively referred to as the “Critical Agreements”, and the services provided under the Critical Agreements are collectively referred to as the “Critical Services”.

[15] USS is also exclusively responsible for the sales function in respect of contracts with purchasers who are original equipment manufacturers (“OEMs”) in the automotive industry in Canada and the United States. USSC is heavily dependent upon such business. USS is also USSC’s primary sales agent for other steel products sold to customers in the United States.

[16] As mentioned, USS has been responsible for allocating production to USSC, based in large part on the sales contracts that USS negotiates with the OEM purchasers. The plant loading arrangements are briefly summarized as follows in the Monitor’s twelfth report dated August 31, 2015 (the “Twelfth Report”):

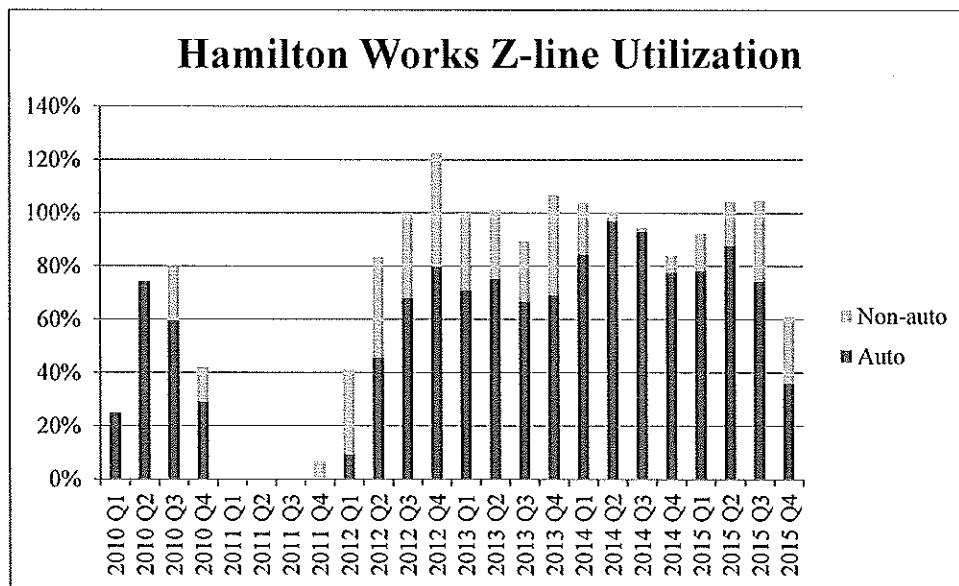
..., although it is not formalized in a written agreement, USS centrally plans the loading of its North American steel mills, including USSC’s Hamilton Works and Lake Erie Works. The production generated at USSC’s mills is ultimately one of the key drivers generating revenue and cash flow, as semi-finished or finished mill products are ultimately sold to Canadian and U.S.-based customers, or to other USS mills for further processing. The current mill loading and production allocation process has been followed for a number of years. Although there is no written agreement between USS and USSC with respect to USS’s allocation of production, there is a structured process that is understood among the parties and followed. This process is referred to herein as “plant loading”.

Pursuant to the plant loading process, USS has been loading USSC’s plants with particular products to be produced at Lake Erie Works and Hamilton Works during the course of the CCAA proceedings. Any significant changes in

production since the Filing Date have been largely due to market conditions and generally challenging steel demand in the North American steel market and not as a result of reallocation to U. S. mills of automotive steel currently being manufactured by USSC.

... a large proportion of Hamilton Works' production is ultimately sold to North American automotive customers. Such steel is produced at Lake Erie Works and then further processed at Hamilton Works' cold mill and Z-line (which is a zinc coating line). ..., automotive contracts represented a significant proportion of steel processed at the Hamilton Works plant in fiscal 2014.

[17] The chart below sets out a summary of information provided by USSC to the Monitor with respect to historical utilization rates for the Hamilton Works Z-line. The Z-line has historically produced a significant proportion of automotive steel as a proportion of its total production. It should be noted that there was a lock-out at the Hamilton Works from November 2010 to December 2011. The Court understands that the utilization for the third and fourth quarters of 2015 are USSC's estimates based on its assessment of expected Z-line production taking into account the impact of the Diversion Decision described below.



Note: The utilization rates above are expressed as a percentage of the Z-line's rated capacity which, depending on the product mix, may exceed 100%.

Recent Developments

[18] The motions before the Court were commenced in response to two recent decisions of USS that impact the amount of work to be allocated by USS to USSC in the fourth quarter of 2015 and for the calendar year 2016 and beyond, respectively.

The Diversion Decision

[19] In its Twelfth Report, the Monitor notified the stakeholders that USS had decided to redirect or divert certain automotive steel production and finishing work scheduled for production at USSC facilities in the fourth quarter of 2015 to USS mills located in the United States (the “Diversion Decision”).

[20] The following statements in the Twelfth Report describe the Diversion Decision as it was understood on August 31, 2015:

USSC and the Monitor have recently received notification from USS that approximately 15,000 tons of monthly production scheduled for customer delivery in early October will be redirected to USS mills in the United States rather than being allocated to and produced at Lake Erie Works and finished at Hamilton Works. ... The parts being diverted to the U.S.-based mills represent relatively higher gross margin production for Hamilton, so the impact on Hamilton’s revenue, earnings and cash flow will be significant.

As a result of the proposed reduction of production in Canada, it will be necessary for USSC to layoff approximately 17 employees and re-deploy a further 10 employees into other work, assuming the production is not replaced from other sources. Given the lesser impact to Lake Erie Works’ operations (on a proportionate basis), USSC is not contemplating layoffs at that facility as a result of the shift in production.

USSC has advised the Monitor that it expects it will not, on a timely basis and at the same pricing, be able to find alternate customers to make up for all the business expected to be lost in 2015 and 2016 due to the proposed change in plant loading. As stated previously, USS is USSC’s primary sales agent for automotive steel, and USSC does not have its own automotive sales staff. USSC has a smaller sales group that services certain non-automotive customers in the Canadian marketplace. USSC has advised the Monitor that it may be able to replace some of the lost tonnage referred to in the previous paragraph, but it is not certain and finding new customers could take up to a year. ...

Although this does not represent all of Hamilton Works’ automotive production the above tonnage loss represents approximately 27% of total Hamilton Works total production, based on current production levels.

USS has informed the Monitor that the decision to reallocate production to plants in the United States was made on a basis that it believes is consistent with past practice...

The Monitor has provided updated information regarding the status of implementation of the Diversion Decision and its impact on USSC in its thirteenth report dated October 2, 2015 (the “Thirteenth Report”). Set out below is a summary from the Thirteenth Report of the estimated approximate volume of steel production moved, or identified to be moved, from USSC’s plants

to USS plants in the United States pursuant to the Diversion Decision, which was provided to the Monitor by USS:

Summary by Customer	Customer	# of parts numbers	Weekly est. volume (NT)	Monthly est. volume (NT)
Cold Roll Full Hard for Further Processing	Auto customer - A	10	344	1,492
	Auto customer - B	2	31	132
	Auto customer - C	12	522	2,263
	Auto customer - D	34	586	2,538
		<u>58</u>	<u>1,483</u>	<u>6,425</u>
Z-Line	Auto customer - A	20	514	2,225
	Auto customer - B	11	548	2,375
	Auto customer - C	15	470	2,035
	Auto customer - D	52	654	2,834
		<u>98</u>	<u>2,185</u>	<u>9,469</u>
	Total	<u>156</u>	<u>3,668</u>	<u>15,895</u>

[21] It is understood, however, that there is still some automotive-related production which was intended to be diverted but is, and will continue to be, processed at the Hamilton Works in accordance with an order of the Court pertaining to the Standstill Motion (as defined below) and the Transition Arrangements (as defined below).

[22] USSC estimates that the Diversion Decision will result in a loss of approximately \$40 million of revenue and \$8 million of EBITDA in the fourth quarter of 2015, although, due to a delay in production scheduling and the existence of work in process and finished goods already produced by USSC, a certain amount of this impact may be experienced in the first quarter of 2016.

USS Contracting for 2016

[23] Subsequent to the disclosure of the Diversion Decision, USS also notified the parties that, having learned that its offer in the SARP had been rejected, it proposed to refrain from submitting any customer bids in the current round of negotiations with the OEM purchasers that would contemplate any allocation of automotive-related steel production to USSC. The following background to this decision and its consequences to USSC are relevant to the issues on these motions.

[24] The OEM purchasers contract to purchase steel products pursuant to calendar year contracts that are negotiated starting in or around September of the prior year. It is understood that USS's OEM customers have now opened contract discussions for the 2016 calendar year. USS says that, in this round of negotiations, some OEMs are seeking supply contracts that extend beyond 2016 in view of current conditions in the steel market.

[25] USS says that it conducts such negotiations having regard to its production capacity for the following year. It says this is critical because the OEM purchasers must be satisfied on the reliability of production and certainty of supply throughout the entire contract term as a necessary requirement, given the supply chain demands of the OEMs. These demands include, in particular, delivery in accordance with their "just in time" inventory management systems. In

this context, given the present circumstances, USS considers USSC's production capacity in 2016 to be uncertain.

[26] USS takes the position that, given these business realities regarding its customers, as well as its uncertainty regarding USSC's production capacity in 2016, it is not prepared to contract for OEM business for allocation to USSC. Accordingly, while USS has submitted initial bids relating to automotive production for 2016, USS has limited its initial customer bids to match the automotive production capacity of its U.S.-based mills and did not submit any bid that would involve allocation of automotive production to USSC facilities. Instead, as described further below, USS proposed a contract negotiation protocol between USSC and USS which contemplates that USSC will bid independently for its own OEM production.

[27] As a result of this decision, USSC has had to recast its business plan for 2016. Compared to its projections in its previous business plan for 2016, which assumed continued plant loading by USS, USSC now estimates revenue and EBITDA in 2016 will decrease by approximately \$361 million and \$106 million, respectively, on forecast sales of approximately 492,000 net tons. This estimate assumes a scenario in which USSC loses all automotive-related steel production and is unable to replace this lost production with new business.

The Motions Before the Court

[28] This round of motions was commenced by the United Steel Workers Union and Local 1005 (collectively, "the USW"), who brought a motion seeking an order declaring that the actions of USS in respect of the Diversion Decision contravened the Initial Order (the "USW Motion"). The USW Motion also sought an order, among other things, directing USS to immediately take steps to cancel the redirection or diversion of such work; directing the continued mill loading and production allocation of such work to USSC in accordance with the *status quo*; and directing USS not to terminate the supply of any goods and services required by USSC for the continued operation of its steel mills.

[29] After learning of USS's intentions respecting the contracting for, and allocating of, work for 2016, the relief sought in the USW Motion was broadened. The USW Motion now includes a request for an order requiring USS to continue to contract for, and to allocate, production and finishing work for the USSC mills, including, in particular, automotive-related production, in respect of the 2016 calendar year in accordance with its practice since the Filing Date.

[30] For its part, USS brought a motion seeking Court approval of a contract negotiation protocol that USS and USSC would follow with respect to the bidding for, negotiation of, and contracting for, the production and supply of steel products for OEM purchasers in the calendar year 2016 (the "USS Motion"). In the alternative, USS sought a declaration that: (1) it has no obligation to sell or attempt to sell products to OEM customers in respect of 2016 and beyond that would require plant loading capacity and production at USSC plants; and (2) it has no obligation to load production at USSC plants in respect of any OEM contracts for 2016 and beyond that USS might be awarded, except on terms and in amounts that are mutually agreeable to USS and USSC, in consultation with the Monitor.

[31] In addition, USS sought an order of the Court terminating effective December 10, 2015 all services currently provided by USS to USSC, excluding contracts relating to the supply of new materials from USS to USSC, but including the Critical Services. Pending such termination, USS also sought an order requiring USSC to provide a cash deposit or letter of credit satisfactory to USS to cover any credit exposure of USS in relation to the provision of goods and services to USSC or, alternatively, a declaration that it is under no obligation to provide money or credit to USSC in accordance with section 34(4) of the CCAA, notwithstanding the terms of the Initial Order.

[32] Concurrently, USSC brought a motion seeking direction from the Court as to whether the Diversion Decision contravened paragraph 6 of the Initial Order (the "USSC Motion"). In addition, USSC seeks an order, which it describes as a "Business Preservation Order", having the following two components: (1) an authorization and direction to discontinue the SARP, other than with respect to the sale of the Hamilton lands; and (2) an authorization and direction to implement a cash conservation and business conservation plan described in greater detail below (the "Business Preservation Plan"). The Business Preservation Order sought by USSC also contains an approval of the Court for amended and restated DIP financing arrangements described in greater detail below (the "Amended DIP Financing").

[33] The Business Preservation Plan is directed towards providing a basis for continuation of USSC's business and operations until the end of 2016 in the hope that a restarted sales and restructuring process in the spring of 2016, or a consensual settlement, will generate a viable offer for USSC's business and assets. The Business Preservation Plan contemplates a number of cash conservation measures that involve suspensions of payments that will affect various stakeholders. It also contemplated a declaration that USS is a "critical supplier" within the meaning of section 11.4 of the CCAA. Such a declaration is no longer necessary given the terms of the Transition Arrangements described below.

[34] Representative Counsel for the non-union active employees and retirees of USSC also brought a motion seeking relief which is substantially similar to the relief sought by the USW in respect of the Diversion Decision of USS and the relief sought by USSC in respect of the Critical Services (the "Representative Counsel Motion"). In particular, Representative Counsel sought a declaration that the Diversion Decision contravened paragraphs 6, 19 and 20 of the Initial Order. Representative Counsel also asserted a separate claim that the conduct of USS in respect of the plant loading issues (as defined below) is oppressive of the employees and retirees of USSC for the purposes of section 241 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. Representative Counsel also sought, among other relief, an order requiring USS to terminate any redirection of production and finishing work to its other mills, to restore the plant loading contemplated prior to the Diversion Decision, and to compensate USSC for any losses caused by the Diversion Decision.

[35] Subsequently, Representative Counsel brought a further motion seeking an order that USS terminate any redirection of production and finishing work and that USS be required to restore and continue to allocate production of automotive and other steel products to USSC until the Court released its decision on the USW Motion and the Representative Counsel Motion (the "Standstill Motion"). The Standstill Motion was adjourned to be heard together with the other

motions above on the agreement of USS and Representative Counsel, which included a confirmation of USS that no additional parts would begin production in the United States prior to October 1, 2015 and an understanding that the Monitor would issue a supplementary report on the status of the plant loading issue.

[36] In view of the significance of the failure of the SARP and the actions of USS in respect of plant loading for the prospects for USSC, the Court directed the principal stakeholders to participate in a mediation under the direction of a mediator who was to be selected by these parties.

[37] In accordance with this order, the Hon. Douglas Cunningham (the “Mediator”) conducted a mediation among the principal stakeholders between September 24 and September 28, 2015. The mandate of the Mediator was to explore the possibility of a global settlement among the stakeholders regarding a restructuring plan for USSC, failing which he was to attempt to mediate a consensual agreement among the parties regarding a business plan for USSC going forward. Unfortunately, the mediation did not result in a consensual global settlement regarding a restructuring of USSC.

[38] The motions described above were originally scheduled to be heard on September 29, 2015 following the mediation. However, on that day, the motions were adjourned by order of the Court to October 7 and 8, 2015 with the consent of most, but not all, of the stakeholders to provide time for these parties to pursue a consensual resolution of the business plan issues facing USSC.

[39] After further negotiations assisted by the Mediator and the Monitor, USS and USSC reached an agreement regarding transition arrangements to assist USSC to transition to a fully-independent company while continuing to carry on its business (the “Transition Arrangements”). USSC has therefore brought a further motion seeking the Court’s approval of the Transition Arrangements (the “TSA Motion”). The Transition Arrangements are described in greater detail below.

[40] For the purposes of these Reasons, the issues raised by the stakeholders in the motions described above regarding USS’s actions in implementing the Diversion Decision and in ceasing to contract for, and to allocate, production work to USSC for the 2016 calendar year and beyond are collectively referred to as the “plant loading issues”.

The Issues to be Addressed at this Hearing

[41] As a result of the agreement reached between USSC and USS, and subsequent discussions among the stakeholders, the issues to be addressed at this hearing have been narrowed considerably to USSC’s request for approval of the following matters in the TSA Motion and the USSC Motion: (1) the Transition Arrangements pursuant to the TSA Motion; (2) the Business Preservation Plan; (3) the Amended DIP Financing; and (4) the termination of the SARP. I will address each of these matters in turn.

Approval of the Transition Arrangements

[42] As mentioned, in the TSA Motion, USSC seeks the approval of the Court for the Transition Arrangements that have been agreed to between USS and USSC, including a modified version of the contract negotiation protocol sought by USS on the USS Motion.

The Principal Terms of the Transition Arrangements

[43] The following describes the principal elements of the Transition Arrangements. The complete text of the Transition Arrangements is attached to these Reasons as Appendix A.

[44] The Transition Arrangements generally provide for the continued supply by USS and its affiliates of all services that USSC requires or relies upon for its business and affairs at existing cost to USSC for up to 24 months. These services include the Critical Services. Arrangements for procuring customer sales orders, including in respect of automotive-related production for 2016 and beyond, are not included in the services that USS is required to continue providing. The arrangements relating to bidding on 2016 automotive production are dealt with in the proposed 2016 Automotive Contract Negotiating Protocol described below.

[45] To secure payment to USS for the supply of these goods and services, USS will receive a Court-ordered "Critical Supplier Charge" on the property of USSC, subordinate to the Replacement DIP Lender's Charge, Administrative Charge (Part 1) and Permitted Priority Liens, (as those terms are defined in the Replacement DIP Financing Order or the Initial Order), but current payment terms will remain the same.

[46] The quantity of iron ore required to be purchased by USSC, pursuant to an existing agreement between the parties for the supply of iron ore by USS to USSC for the 2015 shipping season (which ends early in January 2016), will be adjusted such that USSC will cancel approximately 66,000 tons of iron ore and may cancel up to an additional approximately 165,000 tons by advising USS of the final cancelled tonnage by October 31, 2015. USSC will accept delivery of all coal that it is required for the Lake Erie Works for the 2015 shipping season pursuant to the existing cost structure under an existing agreement between the parties for the supply of coal by USS to USSC. USSC will also receive the approximately 331,000 tons of coal remaining to be delivered in 2015 under the Coke Conversion Agreement.

[47] In exchange for maintaining the existing schedule in respect of the Diversion Decision relating to automotive production moved or scheduled to be moved in the fourth quarter of 2015, USS will release any interest it might otherwise have in the \$5.5 million DIP exit fee contemplated by the USS DIP Financing which is currently being held in escrow by the Monitor. These funds will become immediately available to USSC to assist with its liquidity needs and general corporate purposes in connection with the Business Preservation Plan.

[48] USS may request production of some non-automotive steel production in 2016 or beyond from USSC, subject to mutual agreement between the parties, with incremental opportunities to be identified and discussed. Sales to OEM customers will be dealt with pursuant to the 2016 Automotive Contract Negotiating Protocol described below.

[49] USS will provide USSC with funds to pay pension contributions, other than normal cost pension payments, owing under the Stelco Regulation between September 1 and December 31, 2015 pursuant to the USS Pension Guarantee (as defined below). These payments will be made by USSC.

[50] USS will support the Business Preservation Plan and the Amended DIP Financing and the parties will enter into good faith discussions regarding the timing and terms of a new SARP in which USS will not be a bidder. Provided that USSC is operating materially in accordance with the Business Preservation Plan, USS will also refrain from seeking or supporting any process or court order prior to December 31, 2015 that could result in the liquidation of USSC and, if any such order is sought after December 31, 2015, it shall not take effect prior to January 31, 2016. If a motion is brought in these CCAA proceedings to wind-up the registered pension plans of USSC, USS reserves the right to seek to lift the stay of proceedings granted under the Initial Order, as extended, in these CCAA proceedings to file an application to seek to preserve the priority of its security as a secured creditor of USSC, provided that any such application will be stayed so long as the stay of proceedings under the CCAA is in effect.

[51] In the event of a sale of all or substantially all of the assets of USSC, or in the event USSC is unable to continue operations, other than as a result of a court order obtained by USS, the parties will work in good faith to transition to the purchaser or wind down the provision of services by USS, as the case may be.

[52] USSC will be entitled to continued use of intellectual property currently used by it or available to it and owned or licensed by USS as necessary to operate its business in the ordinary course, including the use of the "Stelco" brand. The parties also agree to enter into good faith discussions to resolve intellectual property disputes by December 31, 2015, failing which they will schedule a motion before the Court to be heard prior to the end of the second quarter of 2016 in order to resolve such disputes.

[53] If possible, USS will continue to provide USSC with D&O insurance coverage and similar insurance coverage as it provides for its subsidiaries in the ordinary course, subject to payment of a reasonable portion of the premium by USSC, with the parties to determine within 30 days if a renewal of the existing policy, which expires on March 1, 2016, is possible and, if it is not, to work cooperatively to find a mutually acceptable solution for comparable D&O coverage.

[54] Lastly, the parties agree to take measures and work on technical solutions to separate and keep confidential information of one party from the other party. There is a mutual non-solicitation clause with respect to employees and, until technical solutions are implemented, employees of USSC or USS with access to confidential information of the other company will be required to execute non-disclosure agreements.

[55] It is important to note for present purposes that both USS and USSC intend the Transition Arrangements to address all financial issues between them in respect of the plant loading issues and its impact on USSC. Although it is not explicitly stated in the Transition Arrangements, the

Court also understands that the USS agreement to the Transition Arrangements is conditional upon there being no additional financial obligations ordered to be paid on behalf of USSC.

The 2016 Automotive Contract Negotiating Protocol

[56] The Transition Arrangements also contemplate a contract negotiation protocol between USSC and USS for the negotiation of automotive-related work with OEM purchasers for the 2016 calendar year and beyond. A copy of the proposed 2016 Automotive Contract Negotiating Protocol is attached to these Reasons as Appendix B.

[57] As mentioned above, in the USS Motion, USS sought approval of the Court to a contract negotiation protocol in the form attached as a schedule to the notice of motion. That contract negotiation protocol provided that USS would facilitate the introduction of USSC's personnel to OEM customers to allow USSC to bid on its own behalf for its own supply contracts in respect of 2016 and beyond. However, such contacts were to be provided only at the request of the OEM customers and not at the request of USSC. In exchange, the contract negotiation protocol provided that USSC would not be entitled to any allocation from USS of production for automotive contracts awarded to USS for 2016 and beyond, nor would USSC have any right to request any loading of USSC plants or production at USSC in respect of those contracts.

[58] In the Transition Arrangements, the parties have agreed to a revised form of the contract negotiation protocol (as so revised, the "2016 Automotive Contract Negotiating Protocol"). Under the 2016 Automotive Contract Negotiating Protocol, USS will provide USSC with contact details for the OEM customers and will introduce USSC's representatives to OEM customers if requested by either the OEMs or by USSC.

The Positions of the Parties

USSC

[59] USSC submits that the Transition Arrangements represent an important co-operative step towards an independent USSC, given that USS has indicated that it is no longer interested in being a purchaser of USSC. They are also a beneficial compromise in light of the unknown outcomes of the motions described above, in particular the motions related to the plant loading issues. The Transition Arrangements are supported by the Financial Advisor of USSC, as well as the Chief Restructuring Officer of USSC, William Aziz (the "CRO"). In an affidavit filed in support of the TSA Motion, the CRO stated that he supports approval of the Transition Arrangements given the importance of continued stability to USSC and the benefits of a co-operative approach between USS and USSC.

Representative Counsel

[60] Representative Counsel advised the Court that, after a review of the principal elements of the Transition Arrangements, it does not oppose the TSA Motion. Representative Counsel further advised that if the Court approved the Transition Arrangements, the Representative Counsel Motion and the Standstill Motion were to be treated as withdrawn.

The USW and Local 1005

[61] The USW takes no position on the TSA Motion to approve the Transition Arrangements. The USW advised the Court that, in the event the Court were to approve the Transition Arrangements on the basis contemplated below, i.e. that such approval extinguished all claims asserted, or that could be asserted, by USSC against USS in respect of the plant loading issues, the USW Motion should be treated as moot. Local 1005 advised the Court that it takes the same position on these matters as the USW.

Province of Ontario

[62] The Province of Ontario (the “Province”) advised the Court that, while in its opinion it would have been preferable for the Transition Arrangements to have included a commitment of USS to some allocation of automotive-related production during 2016, it does not oppose approval of the Transition Arrangements.

The Monitor

[63] The Monitor has provided a supplemental thirteenth report dated October 7, 2015 (the “Supplemental Thirteenth Report”) setting out, among other things, a description of the Transition Arrangements and of the 2016 Automotive Contract Negotiating Protocol. The Monitor also views the Transition Arrangements and the 2016 Automotive Contract Negotiating Protocol as reasonable and appropriate in the circumstances and recommends the approval thereof. In this regard, the Monitor has expressed the following opinions.

[64] First, USSC requires the continuation of the Critical Services beyond December 10, 2015 in order to implement its Business Preservation Plan. The Monitor notes that separating entities that have the degree of integration, scale and complexity of USS and USSC will take substantial time and will require a significant investment of time and money as well as cooperation between the parties.

[65] Second, the Transition Arrangements will assist in providing a framework for a stable and orderly transition for USSC to help it in implementing the Business Preservation Plan and ensuring that it has continued supply of the critical goods and services provided by USS. At the same time, the proposed Critical Supplier Charge will help USSC manage its liquidity and conserve cash as USSC will not be required to provide USS with payment in advance or cash on delivery for the services and iron ore and coal to be supplied by USS but will instead be able to pay for those goods and services in accordance with existing payment timelines and arrangements.

[66] Third, the Transition Arrangements will assist in resolving what could be very contentious, costly and uncertain litigation surrounding a number of operational and transition matters, including iron ore and coal deliveries, the coke conversion arrangements, the plant loading issues and the \$5.5 million exit fee under the USS DIP Financing.

[67] Lastly, the proposed 2016 Automotive Contract Negotiating Protocol includes important revisions requested by USSC to the protocol proposed by USS which has the potential for

assisting USSC in building its own relationships with OEM customers with a view to securing its own business for automotive steel production independent of USS.

Analysis and Conclusions

[68] The Transition Arrangements constitute a settlement agreement among several significant stakeholders in this CCAA proceeding. I note that USSC and USS intend the Transition Arrangements to have the effect of extinguishing and releasing all present and future claims of any nature that could be asserted by, or on behalf of, USSC against USS in respect of the plant loading issues and that the Court's approval of such arrangements will therefore extend to an extinguishment and release of all such claims.

[69] The test for approval of a settlement agreement during CCAA proceedings has been set out as follows in, among other decisions, *Sino-Forest Corp. (Re)*, 2103 ONSC 1078, 100 C.B.R. (5th) 30 (S.C.) at para. 49 per Morawetz R.S.J.:

In assessing a settlement within the CCAA context, the court looks at the following three factors, as articulated in *Robertson, supra*:

- (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.

[70] I am satisfied that the Transition Arrangements satisfy this test for the following reasons.

[71] First, the Transition Arrangements are consistent with the purpose and spirit of the CCAA, which is to further the prospects of a viable plan of arrangement that will restructure the debtor company or its business in a manner that will allow continued operation of the business. In this case, the Transition Arrangements are directed at ensuring that USSC can continue to maintain its operations during a necessary transition period. This continuation of operations may, in turn, result in USSC being able to obtain and implement alternative suppliers for the Critical Services.

[72] Second, by establishing arrangements by which USSC can carry on its business without interruption while it transitions to a fully-independent status, the Transition Arrangements provide a real benefit to the other stakeholders. The Transition Arrangements, together with the Business Preservation Plan and the Amended DIP Financing, constitute a package that collectively provides USSC the opportunity to carry on its operations, build back its customer base, and seek a new purchaser or investor in a new sales and restructuring process. The Transition Arrangements also settle issues that could otherwise have resulted in uncertain and expensive litigation that would have diverted USSC's scarce resources.

[73] Significantly, by reaching a consensual agreement of the major issues between USSC and USS, the Transition Arrangements provide a basis for co-operation between these parties that will be critical if the continuing arrangements are to function for the benefit of USSC and the

principal stakeholders. In addition, by providing for an orderly separation of USS and USSC, and given USS's statement that it is no longer a bidder for USSC, the Transition Arrangements may also increase the prospect of a successful sales or restructuring process in 2016.

[74] Third, with respect to the fairness and reasonableness of the Transition Arrangements, the evidence before the Court is that the board of directors of USSC, its CRO and the Monitor are each of the view that the Transition Arrangements provide USSC with all the services and interim supply arrangements that it needs to carry on in accordance with its Business Preservation Plan. I agree with the Province that it would have been preferable for the Transition Arrangements to have included provision for some allocation of production from USS during 2016. However, the Transitional Arrangements do provide for at least a partial, if not a total offset (depending on whether USS's payment of pension contributions in 2015 is taken into consideration), of the adverse impact on USSC's cash flow in the fourth quarter of 2015 resulting from the Diversion Decision. I would also note that the Court has not determined, and is not being asked to determine, the plant loading issues.

[75] Based on the foregoing, the Transition Arrangements are approved on the basis described above regarding the extinguishment and release of all claims as between USSC and USS regarding the plant loading issues.

Approval of the USSC Business Preservation Plan

[76] As mentioned, USSC has developed a Business Preservation Plan which forms the basis for the relief sought by USSC on the USSC Motion.

Background and Details of the Business Preservation Plan

[77] The Business Preservation Plan provides for continued operations at a significantly reduced level for the next 12 to 15 months when a blast furnace reline may be necessary, at which point USSC will not undertake the blast furnace reline or winter inventory buildup and both the Hamilton Works and the Lake Erie Works will be idled and placed on care and maintenance.

[78] USSC, along with the assistance of its Financial Advisor, has prepared a monthly financial forecast of availability under the Amended DIP Financing on the assumption that the Business Preservation Plan, and the cash conservation measures contemplated by the Plan, are approved by the Court and immediately implemented. Based on the availability of borrowings under the Amended DIP Financing, USSC is forecast to have sufficient liquidity to enable it to operate through the forecast period ending July 2016, although liquidity will be relatively tight at certain periods. The Monitor notes however that, if the cash conservation measures contemplated by the Business Preservation Plan are not implemented, the quantum of the funding available pursuant to the Amended DIP Financing may be insufficient to finance USSC's operations through 2016 absent a replacement by USSC, on similar terms, of the business that will be lost as a result of the Diversion Decision and the lack of sales support from USS for automotive production in 2016, or a rapid and significant increase in steel prices.

[79] The Business Preservation Plan is based on, among other things, the assumptions that: (1) USSC's sales will reflect materially lower volumes as USSC will not have the benefit of automotive business procured by USS for 2016; (2) USSC will be able to sell steel at spot prices roughly equivalent to current levels; (3) USS will continue to provide the Critical Services to USSC for a monthly fee; (4) USSC will continue to make non-RRSP pension, RRSP and WSIB payments; and (5) Brookfield will continue to extend DIP financing through the Amended DIP Financing described below, in exchange for the fees provided for therein.

[80] The background to the Business Preservation Plan and its principal features have been set out in an affidavit of the CRO in an affidavit dated September 17, 2015 filed by USSC in support of the USSC Motion. In his affidavit, the CRO states that USSC's board of directors, with the assistance of USSC's management, its Financial Advisor, its legal counsel, the Monitor, and the CRO, have considered various contingency plans for USSC. The scenarios considered by USSC included both the Business Preservation Plan, whereby USSC is assumed to operate at a reduced level through 2016 with the provision of intercompany services by USS, as well as a "hibernation" scenario, which would involve the near term realization of inventory, the orderly wind-down of USSC's operations, and the idling of its facilities pending a future sale opportunity or liquidation.

[81] The Business Preservation Plan includes a number of cash conservation measures reflected in the Business Preservation Order that the board of directors of USSC believes are necessary to enable USSC to maintain sufficient liquidity and continued access to DIP financing in order to continue operations. These cash conservations measures are addressed in greater detail below. USSC believes that implementation of the Business Preservation Plan will significantly reduce its estimated monthly cash depletion over what it otherwise would be if it attempted to continue to operate without the cash conservation measures contemplated by the Plan. However, even with the implementation of such measures, USSC estimates that it will still deplete cash balances at the rate of approximately \$6 to \$8 million per month.

[82] It is USSC's position that, although cash losses have the potential to reduce recoveries that would otherwise be available to stakeholders in a "hibernation" or liquidation scenario, the Business Preservation Plan offers, among other considerations, the following benefits which justify its implementation: (1) allowing USSC to avoid the near-term cessation of operations thereby preserving employment for approximately 2,200 employees at USSC's mills; (2) allowing USSC to continue developing and implementing measures to further reduce costs and improve its competitiveness; and (3) avoiding a near-term wind down which may remove options and end prospects for a going concern sale or solution.

[83] The Business Preservation Plan contemplates the following cash conservation measures by USSC for which it seeks the authorization and direction of the Court: (1) the immediate suspension of all contributions or payments to USSC's nine registered defined benefit pension plans, other than normal cost contributions, and to the retirement compensation arrangement trust fund; (2) the immediate suspension of supplementary pension payments to beneficiaries pursuant to unfunded individual retirement benefits contracts and individual retiring allowances; (3) the suspension of payment of other post-employment benefits (the "OPEBs") to beneficiaries under USSC's OPEB plans, other than the payment of premiums to fund life insurance benefits; (4) the

immediate suspension of payments to the Pension Benefit Guarantee Fund (the “PBGF”) in respect of assessments; (5) the immediate suspension of salary continuance payments to USSC employees no longer actively employed by, or providing services to, USSC; and (6) the immediate suspension of payments on account of municipal taxes to the City of Hamilton and the County of Haldimand. Further detail regarding these cash conservation measures is set out below.

[84] USSC says that it is necessary to implement its Business Preservation Plan immediately in light of the proposed discontinuance of the SARP for the reasons set out above and in the absence of a global restructuring solution. USSC submits that the Court has the authority to approve each of the cash conservation measures contemplated by the Business Preservation Plan pursuant to the broad discretionary authority granted to it under section 11 of the CCAA. Approval of the Business Preservation Plan by October 13, 2015 is also a condition precedent for any draws under the Amended DIP Financing. USSC has advised the stakeholders and the Court that it anticipates that it will require a draw under the Amended DIP Financing on or about that date.

The Cash Conservation Measures

[85] The following describes the particular cash conservation measures in the Business Preservation Plan in greater detail and any additional authority of the Court relied upon by USSC to approve such measures.

Suspension of Pension Contributions

[86] As part of the cash conservation measures in the Business Preservation Plan, USSC seeks authorization to suspend immediately all contributions to USSC’s nine registered defined benefit plans, other than normal cost contributions.

[87] USSC has made all contributions to the registered defined benefit plans in the ordinary course when due since the Filing Date. However, USSC says that, if it is required to continue to make such contributions, it will be required to pay approximately \$23.65 million, inclusive of normal cost contributions, in respect of contributions to its registered defined benefit plans for the remainder of 2015, with such payments increasing significantly to an estimated \$18.6 million per month as of January 1, 2016 when the registered defined benefit plans become subject to the general funding regime under the *Pension Benefits Act*, R.S.O. 1990, c. P.8. USSC says that it does not have sufficient liquidity to continue to pay these pension contributions.

[88] Essentially, in respect of its registered defined benefit plans, USSC proposes to suspend contributions relating to the solvency deficiency in these plans on the basis that the solvency deficiency funding contributions represent amortization of a deficit that existed prior to the date of the Initial Order and, as such, these payments relate to pre-filing obligations..

[89] In several other decisions, courts have also suspended pension contributions (other than normal cost payments) in CCAA proceedings where failure to stay these obligations would jeopardize the business of the debtor company and the company’s ability to restructure: see, for example, *Fraser Papers Inc. (Re)* 2009, 55 C.B.R. (5th) 217 (Ont. S.C.J. [Comm. List]), at paras.

20-21, and *Timminco Limited (Re)*, 2012 ONSC 506, 85 C.B.R. (5th) 169, at para. 63, in which Morawetz J. (as he then was) stated:

Where the facts demonstrate that ordering a company to make special payments in accordance with provincial legislation would have the effect of forcing the company into bankruptcy, it seems to me that to make such an order would frustrate the rehabilitative purpose of the CCAA. In such circumstances, therefore, the doctrine of paramountcy is properly invoked, and an order suspending the requirement to make special payments is appropriate (see *ATB Financial* and *Nortel Networks Corporation (Re)*).

In my opinion, the principles applied in these cases, in particular, the principle of paramountcy, are applicable in the present circumstances and are relied upon in the Court's approval of the Business Preservation Plan.

[90] I note as well that USS and the Province are parties to a guarantee agreement, pursuant to which USS unconditionally guaranteed certain pension funding obligations of USSC due and owing under the Stelco Regulation between September 1, 2015 and December 31, 2015 (the "USS Pension Guarantee"). The Transition Arrangements contemplate that USS will provide USSC with funds solely for the purpose of payment of such pension contributions, not including normal cost contributions. USS will make such payments to USSC pursuant to the USS Pension Guarantee.

Suspension of Certain Supplementary Pension Payments

[91] USSC also seeks authorization to suspend immediately the supplementary pension payments to beneficiaries made pursuant to unfunded individual retirement benefit contracts and retirement compensation arrangements (collectively "SERP Benefits").

[92] USSC has made SERP Benefits payments in the ordinary course when due since the Filing Date. It is understood that such payments are projected to be approximately \$663,000 for the remainder of 2015 and \$1.99 million for 2016.

[93] USSC relies on the same principles as were set out above in respect of the suspension of registered pension contributions, namely the fact that the SERP Benefits represent pre-filing unsecured obligations of USSC that can be stayed where a suspension of payments furthers the purposes of the CCAA and a failure to stay these obligations would jeopardize the business of a debtor company and the company's ability to restructure its business and affairs.

Suspension of Payment of Post-Employment Benefits

[94] USSC also seeks the suspension of OPEB payments to retirees, effective on October 9, 2015, which is referred to in the Business Preservation Plan Order as the "OPEB Claims Suspension Date".

[95] The OPEBs include prescription drugs, dental services, certain other medical services, hospital charges, life insurance premiums and vision costs. All OPEB payments, other than life

insurance benefits, are self-insured by USSC. Accordingly, while the claims for eligible OPEB costs incurred by retirees, their spouses and their dependants are administered by Green Shield Canada under an administrative services-only contract with USSC on a pay-as-you-go basis, the claims are funded by USSC. USSC is not, however, seeking to suspend non-retirement benefits, such as long-term disability, short-term disability, and accidental death and dismemberment insurance, which are benefits provided to active USSC employees.

[96] The projected OPEB funding for the remainder of 2015 is estimated to be approximately \$3.6 monthly for a total of \$14.4 million, and for 2016 is estimated to be approximately \$100 million.

[97] Notice of the pending suspension of OPEBs has been provided to retirees. USSC served its motion on September 17, 2015. The Court understands that counsel for the USW and USW Local 8782 and counsel for USW Local 1005 as well as the Representative Counsel were all served at this time. In addition, on September 18, 2015, the president of USSC, Michael McQuade, sent a letter to all retirees explaining the relief sought in this motion.

[98] Of all the cash conservation measures proposed in the Business Preservation Plan, this is the most difficult for the Court and the most contentious among the parties.

[99] In an eloquent affidavit in opposition to approval of the Business Preservation Plan, Gary Howe, a USSC employee at the Hamilton Works and the current president of Local 1005, addressed the significance of this compensation for current and retired steelworkers. Employment in steel mills is a dangerous occupation in a hazardous environment. These employees and former employees accepted these risks on the understanding that they would have access to any necessary medical coverage should they become injured or ill as a consequence of their employment. The current and retired employees of USSC, particularly those who work or have worked at the older Hamilton Works, rely heavily on the OPEBs to address medical conditions involving chronic illness or injury that is often related to their employment. This is therefore a very important issue to the USW, including Local 1005, and to the union retirees who understandably regard the OPEBs as part of their compensation that should not be suspended, even temporarily.

[100] The Court's jurisdiction under the CCAA to suspend OPEB payments "when necessary to enhance liquidity to promote the survival of the company in financial distress" has been recognized on at least one other occasion: see *Bloom Lake, g.p.1 (Arrangement relatif a)*, 2015 QCCS 3064, [2015] Q.J. No. 6111, at para. 104, leave to appeal dismissed, 2015 QCCA 1351, [2015] Q.J. No. 7736. In *Bloom Lake*, the CCAA debtor companies sought an order to suspend the payment of OPEBs *nunc pro tunc* to the CCAA filing date. In granting the relief sought, the court noted that debtor companies did not have the funding available to continue to pay OPEBs. Also, since these amounts related to services provided pre-filing, the OPEBs represented unsecured, pre-filing claims. Given the financial circumstances of USSC, in particular the probability of negative cash flow even under the Business Preservation Plan and the need to access financing under the Amended DIP Financing to continue to operate in such circumstances, I see no substantive difference between the financial circumstances in *Bloom Lake* and the present circumstances. Nor is the fact that the OPEBs in *Bloom Lake* were provided

through an insurer, rather than funded directly as in the case of USSC, of relevance for present purposes.

[101] I would add that, as was also the case in *Bloom Lake*, the present circumstances do not entail a proposed unilateral amendment or variation of the terms of, or alteration of rights under, the collective agreements between the USW and USSC, but rather an amendment to the Initial Order suspending payment of the OPEBs.

Pension Benefit Guarantee Fund Assessments

[102] USSC's Business Preservation Plan also contemplates the immediate suspension of all fees payable hereafter to the PBGF in respect of USSC's registered defined benefit plans for the remainder of these CCAA proceedings. USSC's 2015 PBGF assessment, which was due no later than September 30, 2015, is approximately \$4.4 million. Payment of this amount was stayed on an interim basis pending the hearing of these motions by the order of the Court that adjourned the hearing date of these motions from September 29, 2015, as described above. None of the parties has specifically opposed the suspension of these payments.

Suspension of Salary Continuance Payments

[103] In 2014, prior to the commencement of these CCAA proceedings, USSC terminated a number of salaried employees as part of a company-wide downsizing initiative. USSC currently makes salary continuance payments to 18 employees who were terminated and who are no longer actively employed by, or providing services to, USSC, but who are still receiving salary during their notice periods. The total outstanding amount owing by USSC to employees under these salary continuance arrangements is approximately \$727,000.

[104] While paragraph 9(a) of the Initial Order contains language that allows USSC, with the Monitor's consent, to pay amounts in respect of severance, this language is permissive rather than mandatory. The Initial Order does not require USSC to pay salary continuance while the stay is in effect.

[105] USSC proposes to suspend the salary continuance payments on the grounds that they are pre-filing obligations of USSC in respect of past service. It says that these are non-essential payments that are unrelated to its ongoing operations. If approved, the Business Preservation Order will stay any payments processed after the date of the Court order. As a result of USSC's internal payroll procedures, the first suspended payments for such employees would be the salary continuance payments that would otherwise have been payable on November 1, 2015. USSC notes that the employees will be entitled to file a claim in any employee claims process in respect of the suspended payments. I would also note that the effect of the relief sought is that there will be rough equality of payment between the individuals affected by the Business Preservation Order and the individuals whose circumstances were addressed by the Court in *U.S. Steel Canada Inc. (Re)*, 2015 ONSC 5990.

Suspension of Property Tax Payments

[106] USSC pays municipal realty taxes in the amount of approximately \$1.4 million quarterly, or \$5.8 million annually, to the City of Hamilton (“Hamilton”) and approximately \$896,000 quarterly, or \$3.6 million annually, to the County of Haldimand (“Haldimand” and, collectively with Hamilton, the “Municipalities”). USSC has paid all municipal realty tax amounts to date. The Business Preservation Plan also contemplates the suspension of all municipal realty tax payments.

Positions of the Parties

Representative Counsel

[107] Representative Counsel advised the Court that, in spirit, it would wish to oppose approval of the Business Preservation Plan but, of necessity, it felt compelled not to do so in view of the financial circumstances facing USSC and the desire that the now-independent USSC will succeed. Representative Counsel emphasized, however, that its position is based on two understandings that are important to the non-union active employees and retirees: (1) that USSC will continue to fund the life insurance premiums payable under retiree life insurance that is provided through a policy with Desjardins Financial Security Life Assurance Company, for which USSC has an obligation to remit the premiums; and (2) the important consideration that USSC is not seeking to terminate or disclaim, under section 32 of the CCAA or otherwise, any of its obligations to make the pension contributions, OPEB payments and SERP Benefits payments that are addressed in the Business Preservation Plan, but is seeking only the authorization to suspend temporarily such payments to deal with its current financial situation.

The USW

[108] The USW opposes approval of the Business Preservation Plan. The USW submits that, in determining whether to sanction USSC's Business Preservation Plan and, in particular, whether to grant the requested relief suspending its payment obligations with respect to pensions and the OPEBs, the Court should at a minimum consider whether: (1) USSC faces insurmountable losses; (2) the relief is material to USSC's survival; (3) USSC should have consulted with the USW in an attempt to reach a consensual resolution; and (4) USSC has canvassed other available options.

[109] In particular, the USW submits that USSC has made insufficient efforts to engage the USW in consultations to determine whether the parties can reach a consensual resolution with respect to the issues pertaining to the pension contributions and OPEB payments. It also submits that USSC has led no evidence with respect to the other options that it has canvassed which might allow USSC to put in place the cost efficiencies it asserts are necessary in order to save the business of USSC without suspending such payments.

[110] In addition, the USW submits that any approval should include a requirement that USSC provides better and more timely financial reporting to the USW and its financial consultants, as well as a “come-back” provision to permit a reassessment of whether the financial condition of

USSC at some point in the future will permit a resumption of the pension contribution payments and the OPEBs. In this regard, I note that USSC and the Monitor both contemplate monthly financial reporting to the stakeholders going forward. I would also observe that, in these CCAA proceedings, the USW (or any other party) is at liberty to bring a motion for re-consideration of the suspension of these payments and benefits in the event that the financial circumstances of USSC, or the information upon which the approval of the Business Preservation Order is sought, were to change.

Province of Ontario

[111] The Province stated that it was not in a position to support the motion for approval of the Business Preservation Plan, but it does not oppose any particular features of the Plan.

USS

[112] Consistent with its commitment under the Transition Arrangements, USS supports the approval of the Business Preservation Plan.

The Monitor

[113] The Monitor supports and recommends approval of the Business Preservation Plan. In this regard, the Monitor notes that the current environment for a transaction in the steel sector is “less than optimal” due to deteriorating prices and demand in the North American steel market since these CCAA proceedings commenced. The Monitor is of the view that USSC needs to bring stability to its operations while it disengages from USS, which will also allow it the opportunity to develop new markets and customers for its steel production. It also says that it is critical for such stability that USSC conserve cash flow to create as much flexibility, and provide as much time, as possible to ensure sufficient financing to operate its business and to fund the necessary capital investment as well as to develop a restructuring solution.

Analysis and Conclusions

[114] I propose to consider the motion for approval of the Business Preservation Plan, including the cash conservation measures described above, in two parts. I will first consider the specific issues of the Court’s authority raised by the Municipalities in regard to the suspension of municipal realty taxes. I will then address the approval of the Business Preservation Plan as a whole.

The Proposed Suspension of Municipal Realty Taxes

[115] The Municipalities oppose the relief sought on three legal grounds discussed below. In addition, Hamilton asserts a further argument specific to it based on an agreement dated February 27, 2015 between USSC and Hamilton (the “Settlement Agreement”), which is also discussed below. I will address each issue in turn.

[116] First, the Municipalities argue that post-filing taxes are not “claims” for the purposes of section 19 of the CCAA and, therefore, may not be dealt with in any plan of compromise or

arrangement under that statute. While I agree that post-filing obligations, including post-filing taxes, are not Claims that can be dealt with in any plan of arrangement under the CCAA, the Municipalities' argument proceeds on the basis of an important misunderstanding. The USSC motion seeks the Court's approval for the suspension of municipal realty tax payments, rather than a compromise or arrangement of the claims of the Municipalities by way of a plan of arrangement under the CCAA. Accordingly, section 19 of the CCAA has no application to this motion.

[117] Second, the Municipalities assert that the suspension of payments will increase cash flow to USSC and, as a result, this suspension will constitute a bonus to USSC in contravention of section 106 of the *Municipal Act, 2001*, S.O. 2001, c. 25. The relevant provision of the *Municipal Act, 2001* reads as follows:

106(1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for the purpose.

(2) Without limiting subsection (1), the municipality shall not grant assistance by, ... (d) giving a total or partial exemption from any levy, charge or fee.

[118] Section 106 is intended to prevent a municipality and a third party from entering into a transaction in which the municipality confers an undue advantage on the third party: see *Nowak v. Fort Erie (Town)*, 2012 ONSC 2152, [2012] O.J. No. 1943, at paras. 28-31. Section 106 is therefore directed toward assistance given by a municipality to a manufacturing business or other industrial or commercial enterprise. In this case, the Municipalities oppose the relief sought by USSC and it is a court order, rather than any action on the part of the Municipalities, that is bringing about the suspension of the realty tax payments. Quite apart from the fact that the continued operation of USSC with the possibility of a longer term solution is likely to benefit the Municipalities, I do not see how it can be argued that an involuntary suspension of municipal realty taxes imposed on the Municipalities over their objections by the Court can be characterized as the giving of assistance or the conferring of an undue advantage on USSC by the Municipalities for the purposes of section 106 of the *Municipal Act, 2001*.

[119] The principal argument of the Municipalities is that municipal realty taxes represent payment for the provision of post-filing services that are provided by the Municipalities or require the Municipalities to advance credit to USSC, and, as such, cannot be stayed pursuant to an order of a court under the CCAA. They rely, in particular, on the provisions of section 11.01 of the CCAA, which read as follows:

No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

[120] I do not think that municipal realty taxes are properly characterized as a payment for the provision of post-filing services as the concept of “services” is understood for the purposes of section 11.01. Rather, municipal realty taxes are a levy imposed on property owners to fund the operations of a municipality exercising its authority and obligations as a local governmental body. I note that the Alberta Court of Appeal appears to have reached a similar conclusion in *Montreal Trust Company of Canada Ltd. v. Smoky River Coal Ltd.*, 2001 ABCA 209, 205 D.L.R. (4th) 94, at paras. 28-33, albeit in a somewhat different context, as the case dealt with entitlement of a municipality to the benefit of a post-petition trade creditor charge. Similarly, paragraph 11.01(b) addresses a “further advance of money or credit”. As such, the provision assumes a pre-existing credit relationship which is maintained on an involuntary basis after the commencement of CCAA proceedings. Such a relationship is absent in the present circumstances. For these reasons, I conclude that the present circumstances do not fall within the circumstances contemplated by section 11.01.

[121] Lastly, as mentioned, USSC and Hamilton are parties to the Settlement Agreement, under which USSC and Hamilton agreed that Hamilton could offset certain amounts owing by USSC against a tax refund owing by Hamilton to USSC, and USSC agreed to pay a deposit to Hamilton for future utility charges. USSC also agreed to pay future realty taxes to Hamilton in accordance with the Initial Order. Hamilton argues that the relief sought amounts to an amendment of the Settlement Agreement, which the Court has no jurisdiction to grant under section 11 of the CCAA. I note that neither party sought the approval of the Court to the Settlement Agreement.

[122] I do not accept this argument for the following reasons.

[123] First, Hamilton argues that it received an absolute covenant from USSC to pay all realty taxes in consideration for its covenants in the Settlement Agreement. As such, it says the effect of the suspension is to amend the agreement with respect to the consideration to be received by Hamilton. I do not think that is an accurate description of the USSC covenant in respect of municipal realty taxes, which was limited to a covenant to pay such taxes to the extent not otherwise suspended by order of the Court. In this regard, the Settlement Agreement specifically contemplated non-payment of tax amounts to Hamilton, and it provides Hamilton with a remedy in such a circumstance as well as a deposit from USSC to secure payment of future utility arrears. Accordingly, I am of the opinion that Hamilton received the consideration contemplated under the Settlement Agreement.

[124] Second, as a general rule, the agreement between the parties cannot exclude the operation of a court under the CCAA in the exercise of its discretion under section 11, provided any such order furthers the purposes of the CCAA. In this case, there is also no specific language in the Settlement Agreement which indicates an intention on the part of the parties thereto to oust the jurisdiction of the court.

[125] Third, in my view, the principle of paramountcy articulated in *Timminco* above is equally applicable in the present circumstances, again provided any suspension of realty taxes furthers the purposes of the CCAA.

[126] Given the foregoing, I conclude that the Court has the authority under section 11 of the CCAA to order the suspension of the municipal realty taxes otherwise payable to the Municipalities.

[127] In assessing the considerations before the Court that are relevant to the exercise of the Court's discretion to suspend such taxes, I note that the Municipalities have a statutory lien for unpaid taxes provided for in the *Municipal Act, 2001*. The relief sought does not terminate USSC's obligations to pay taxes, but merely suspends the obligation. USSC does not suggest that the effect of the relief sought would be to affect in any way the rights of the Municipalities to exercise their respective remedies for tax arrears in accordance with that statute. The suspension would appear to have a maximum length of 15 months, being the length of the period contemplated by the Business Preservation Plan, which is well within the period before which remedies can be exercised under the *Municipal Act, 2001*. The total amount of unpaid taxes that would accrue during that period and be secured by the statutory lien for realty taxes would not be material relative to the value of the USSC assets and the anticipated amount of any prior ranking security. There is therefore no evidence that the Municipalities' security will be eliminated or materially reduced in the event of a liquidation of USSC as a result of the proposed suspension of payment of municipal realty taxes.

[128] While the Municipalities raise the possibility of a Crown lien for any claim of the Province for environmental clean-up, that is by no means certain. As of today it is entirely speculative. Similarly, the Court cannot speculate on any dealings that might transpire between the Municipalities and the Province if such a claim were to arise.

[129] Accordingly, in the present situation, the principal effect on the Municipalities is a cash flow reduction that must be met by a higher levy for realty tax purposes or access to reserves of some nature. I do not wish to diminish the significance of such consequences to the Municipalities, particularly to Haldimand which is a relatively small municipality with a modest tax base. On the other hand, the evidence before the Court indicates that USSC requires access to the increased cash flow from the various cash conservation measures in the Business Preservation Plan, including a suspension of municipal realty taxes, if it is to continue its operations even at the reduced level contemplated by the Plan. The evidence also indicates that, absent such continuity of operations, the likelihood of a restructuring option for USSC is significantly reduced, if not eliminated. Such a result would have permanent consequences for the Municipalities, which would not be limited to the permanent loss of realty tax revenue.

[130] There is no doubt that the Plan is put forward by USSC with a view to furthering the prospects of a future restructuring plan and, as such, furthers the purposes of the CCAA. The Municipalities have not demonstrated that the ultimate impact on them is sufficiently adverse as to justify a rejection of the Business Preservation Plan. On balance, I think it is clear that continuation of USSC's operations pursuant to the Business Preservation Plan is in the best interest of the Municipalities as well as of the other stakeholders. This is only possible, however, if all of the cash conservation measures are approved, including the suspension of municipality realty taxes. In these circumstances, I conclude that it is appropriate to exercise the Court's discretion to authorize the suspension of payment of municipal realty taxes to the Municipalities under section 11 of the CCAA.

Consideration of the Business Preservation Plan as a Whole

[131] Section 11 of the CCAA grants the Court a broad discretion to make any order considered appropriate in the given circumstances. USSC urges the Court to exercise that discretion to approve the Business Preservation Plan, including the cash conservation measures that are an integral part of the Plan.

[132] When exercising its discretionary authority, this Court must be satisfied that the relief sought furthers the purposes underlying the CCAA, which is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the business is able to continue: see *Hongkong Bank v. Chef Ready Foods*, [1990] B.C.J. No. 2384 (C.A.), at p. 4. In this regard, courts have granted relief to debtor corporations in the form of cash conservation and preservation measures if they are satisfied that such measures are necessary for continued operation under CCAA protection, provided the purposes of the CCAA are being advanced.

[133] In the present proceeding, none of the stakeholders argues that the Court lacks the authority under section 11 of the CCAA to grant the relief sought by USSC. In this regard, it is significant that the relief requested is a temporary suspension pending a consensual global settlement on a restructuring plan for USSC or a sale of USSC or its business. I would add that, insofar as the relief sought would conflict with provincial pension or municipal tax legislation, the principle of paramountcy is properly engaged to avoid a bankruptcy scenario. While it is tempting to consider withholding approval for one or more measures in light of their impact on particularly vulnerable persons who have the sympathy of the Court, in particular the retirees who rely on the OPEBs, the issue before the Court is approval or rejection of the Business Preservation Plan as an entirety. In this regard, the following considerations are relevant

[134] First, approval of the Business Preservation Plan in its entirety is a pre-condition to the availability of financing under the Amended DIP Financing which will be required as early as this week.

[135] Second, and more importantly as discussed below, the anticipated cash flow of USSC over the period until the end of 2016 requires a suspension of payments, and a consequential increase in cash flow, in the aggregate amount contemplated by the cash conservation measures. Given the anticipated cash burn of \$6-\$8 million per month even under the Business Preservation Plan, any reductions in budgeted cash flow would diminish USSC's cash resources, even with the Amended DIP Financing, to the point where it would be incapable of continuing its operations. The evidence also demonstrates that USSC faces insurmountable losses if the Business Preservation Plan is not implemented. The evidence therefore demonstrates that the suspension of payments is material to USSC's survival in the manner contemplated by the Business Preservation Plan.

[136] Third, the USW argues that USSC has failed to demonstrate that it has properly canvassed its costs structure in its entirety to determine whether there are other costs that can be reduced, rather than, in particular, the OPEBs, in order to meet the target reductions of cash flow.

It submits that the Court must be satisfied that USSC has exhausted all reasonable alternatives before suspending the OPEBs and the pension contributions.

[137] The Court would far prefer to be able to identify alternatives to the suspension of these payments. However, none of the stakeholders are able to identify any such alternatives at the present time. It is possible that the operating experience in the new environment will reveal some possible alternatives. I would encourage USSC to be alert to such possibilities as it moves forward. The restoration of the OPEBs should be a priority together with its operating and restructuring priorities. It is also possible that USSC may be able to contract for automotive-related production on its own, in which case improved operating results may present such an opportunity. However, the Court cannot speculate today on the likelihood of these events in the future. It must proceed on the basis of the evidence before it.

[138] Unfortunately, that evidence is unequivocal with respect to alternatives to the Business Preservation Plan. The evidence of the CRO is that USSC has considered various contingency plans and has decided to proceed with the Business Preservation Plan. This has not been challenged in any way by any of the stakeholders. In particular, USSC has given serious consideration to a hibernation scenario as an alternative to the Business Preservation Plan. Such a scenario would appear to simply accelerate a termination of retirement benefits and OPEBs without any corresponding benefit to the past and present employees. I note that, in the Thirteenth Report, the Monitor states that the forecast EBITDA losses under the Business Preservation Plan along with the cash requirements for maintenance capital expenditures and interest on the Amended DIP Financing are only \$1-\$2 million more than the monthly care and maintenance cash costs projected by USSC under the hibernation scenario. As a result, if USSC is able to implement the Business Preservation Plan as projected, it is not anticipated to incur significantly larger incremental cash losses than if it implemented the hibernation scenario, but will preserve the benefits of maintaining a going concern operation.

[139] Fourth, the argument of several stakeholders that the present circumstances are the responsibility of USS and therefore USS should contribute more toward the payment of these obligations is unrealistic for the reasons discussed above in respect of the Transition Arrangements. This is not the agreement that was reached between USS and USSC, and it is not the agreement now before the Court. Any such order would require a determination of the plant loading issues which USS and USSC have agreed are addressed by way of a compromise in the Transition Arrangements.

[140] Fifth, the terms of the Amended DIP Financing require implementation of the cash conservation measures. In the present financial circumstances of USSC and given the negative cash flow expected over the next fifteen months, any such payments would effectively be made out of claims under the Amended DIP Financing, which is unacceptable to Brookfield. Until there is an alternative DIP lender willing to lend to USSC on a basis that would fund some or all of these payments, the Court must assess the Business Preservation Plan in light of the available financing, being the Amended DIP Financing.

[141] Lastly, the Monitor has specifically addressed the issue of suspension of the OPEBs in its Thirteenth Report. The Monitor's conclusion is that:

[T]he unfortunate (but inevitable) fact is that USSC does not have access to liquidity or financing to honour these obligations in the present circumstances and that, if the Order sought by USSC is not made, it will not have the financial resources to continue to carry on in business for the period of time necessary to develop a long term restructuring solution, and a near term cessation of operations will be necessary.

[142] In these circumstances, I conclude that it is not only appropriate, but necessary, to authorize the Business Preservation Plan, including the cash conservation measures contemplated therein.

Approval of Amended and Restated Replacement DIP Financing

[143] In connection with its Business Preservation Plan, USSC has negotiated certain amendments to the DIP Financing, being the Amended DIP Financing for which it seeks the approval of the Court.

[144] These amendments include, principally, the following: (1) a reduction of the loan amount to \$75 million; (2) two six-month extension options from January 28, 2016 and July 28, 2016, subject to the consent of Brookfield and payment of a fee of \$1.5 million for each extension; (3) acceleration of the Amended DIP Financing if USSC terminates its Business Preservation Plan or decides to liquidate its assets; (4) additional budget compliance covenants, including Brookfield's approval of USSC's updated weekly budgets and updated monthly budgets; (5) certain milestones including commencement of a new SARP by May 31, 2016; (6) a collateral coverage covenant requiring that USSC's "Liquidation Value" (as defined in the Amended DIP Financing), less all charges ranking in priority to the Replacement DIP Lender's Charge (as defined in the "Replacement DIP Financing Order"), shall at all times be not less than \$100 million plus the amount of all advances under the Amended DIP Financing; and (7) certain additional affirmative covenants and additional events of default. As mentioned, advances under the Amended DIP Financing are conditional on approval by the Court of the Business Preservation Plan in the form of the order sought by USSC.

[145] It should be noted that the priority of the Replacement DIP Lender's Charge will remain the same as currently exists in respect of advances under the current DIP Financing, with the exception that it is proposed that the Replacement DIP Lender's Charge will now rank in priority to any purchase money security interests in respect of inventory (as so amended, the "Amended Replacement DIP Lender's Charge").

[146] USSC says that the stability afforded by the DIP financing provided by Brookfield cannot be understated. The amendments set out in the Amended DIP Financing were extensively negotiated by USSC's advisors, with the assistance and supervision of the Monitor. These amendments are necessary in light of the circumstances of the failed SARP and the need for continued financing for USSC through 2016. Absent the additional protections provided to Brookfield, it is not realistic to expect that Brookfield would continue to provide extended, committed financing. I note that none of the stakeholders oppose the Amended DIP Financing by itself.

[147] The Court has the authority to approve the Amended DIP Financing under section 11 of the CCAA. I am satisfied that it is appropriate to do so in the present circumstances for the following reasons.

[148] USSC is satisfied that the covenant pattern in the Amended DIP Financing, including in particular the milestones, is compatible with the Business Preservation Plan and the principal assumptions upon which it is based. The availability of DIP financing is a critical component of the Business Preservation Plan. It is not suggested that there is alternative DIP financing available to USSC. The Monitor has reviewed the terms of the Amended DIP Financing and is of the opinion that the Amended DIP Financing is reasonable and necessary in the circumstances and recommends the approval thereof by the Court.

[149] The Court also has the authority under section 11.2 of the CCAA to grant the requested priority of the Amended Replacement DIP Lender's Charge to secure the Amended DIP Financing. In this regard, section 11.2(4) of the CCAA sets out a non-exhaustive list of factors to be considered by a court in addressing such a motion. In addition, Pepall J. (as she then was) stressed the importance of three particular criteria in *Canwest Global Communications Corp. (Re)*, 2009 CarswellOnt 6184, [2009] O.J. No. 4286 (S.C.), at paras. 32-34. In my view, the Amended Replacement DIP Lender's Charge is appropriate based on those factors for the reasons that follow.

[150] As mentioned, the Amended Replacement DIP Lender's Charge is a condition of the Amended DIP Financing which, in turn, is critical for the continued operation of the business of USSC in accordance with the Business Preservation Plan. As such, the Amended Replacement DIP Lender's Charge will advance the prospects of a viable plan of arrangement to restructure the affairs of USSC. In addition, all creditors have had ample notice of the proposed Amended Replacement DIP Lender's Charge and the Monitor is of the view that no creditor will be materially prejudiced by the Amended Replacement DIP Lender's Charge. In this regard, I note that USS, which asserts security in the assets of USSC which will rank behind the Amended Replacement DIP Lender's Charge, does not object to the amendment to the priority sought by USSC. Lastly, the cash flow projections prepared by USSC, including the forecast of availability under the Amended DIP Financing, demonstrate that, on the assumptions upon which the Business Preservation Plan is based, the amount of the financing available under the Amended DIP Financing is appropriate and required to meet USSC's liquidity requirements until the end of 2016.

[151] Accordingly, I am satisfied that the proposed Amended DIP Financing, including the Amended Replacement DIP Lender's Charge, should be approved.

Discontinuance of the SARP

[152] In the absence of any agreement between USSC's stakeholders and any of the bidders in its SARP process, USSC seeks to have the SARP discontinued, except as it relates to the sale of the Hamilton lands. None of the stakeholders present at the hearing of these motions objects to this relief.

[153] Pursuant to the terms of the SARP Order, USSC is not obligated to enter into a transaction with a SARP bidder and, after consultation with the Monitor and the Financial Advisor, USSC has the right to reject all bids. Paragraph 5 of the SARP Order further provides that USSC may apply to this Court for relief with respect to any matter relating to the SARP. Section 11 of the CCAA also provides the Court with the jurisdiction to make any order it considers appropriate in the circumstances.

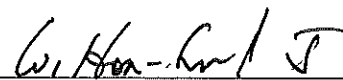
[154] In the current circumstances, given that USSC has not received a viable offer for the ongoing business of USSC and there is no reasonable prospect of receiving such an offer in the immediate future, I am satisfied that it is appropriate to discontinue the SARP, other than the land sale process respecting the Hamilton lands, with a view to launching a new sales and restructuring process at an appropriate time later in 2015 or early in 2016.

Conclusions

[155] Based on the foregoing, the relief sought in each of the TSA Motion, including approval of the Transition Arrangements, and the USSC Motion, including in particular approval of the Business Preservation Plan, the Amended DIP Financing, and the termination of the SARP, is granted.

[156] In conclusion, I wish to address two contentious issues that were raised at the hearing of these motions. First, the parties disputed at some length whether the immediate cause of the present circumstances was the USS plant loading actions described above or the failure of USSC's current sales and restructuring process. Second, the parties disagreed whether the stakeholders, in particular the USW, had been adequately consulted with respect to the issues in these motions and in particular the necessity for the cash conservation measures.

[157] These are not matters that the Court needs to determine in this hearing. Nor are they appropriate considerations in the determination of the approval of these motions. However, I do think it appropriate to observe that the effect of the order giving effect to the approvals granted herein is to close the book on the USS involvement in the operational affairs of USSC. As the Monitor notes in its Thirteenth Report, the reality facing the stakeholders is that, going forward, given that USSC no longer has any support from USS apart from the temporary support to be provided under the Transition Arrangements, acceptance of the economic reality in which USSC finds itself today, and consultation and co-operation among the remaining principal stakeholders, will be crucial for the survival of USSC. In this regard, the parties would be well advised to agree to disagree if necessary with respect to these two contentious, but now historical, issues and focus instead on the future of the newly-independent USSC.



Wilton-Siegel J.

Date: October 14, 2015

APPENDIX A

USSC/USS Transition Arrangements

- 1 **Transition services:** United States Steel Corporation (“USS”) (and all affiliates, including but not limited to U.S. Steel Kosice, s.r.o. and the United States Steel and Carnegie Pension Fund) to continue to provide all services and arrangements that U. S. Steel Canada (“USSC”) requires or relies upon (for its business and affairs, including suppliers, customers, management, board of directors and employees), for up to 24 months under the existing cost mechanism to USSC, with the exception of procuring customer sales orders (including for greater certainty all orders of automotive production in respect of 2016 and beyond) for loading onto the USSC operating facilities, unless by mutual agreement as contemplated in paragraph 6.
 - a. Further discussion required on technical solutions to separate and keep confidential USSC information (pricing/costs) from USS and the same USS information confidential from USSC. The parties agree to cooperate in good faith to find a mutually agreeable technical solution and an agreed budgeted cost prior to implementation. Any employees of one party who have access to confidential information of the other party will execute non-disclosure agreements satisfactory to that other party.
 - b. Upon: (i) any sale of all or substantially all of the assets of USSC; or (ii) USSC being unable to continue operations (other than as a result of an order obtained by USS), then the provision of services by USS to USSC shall be transitioned or wound down, as the case may be in an orderly fashion, pursuant to a transition services agreement to be negotiated in good faith between USS on the one hand and USSC and/or a buyer on the other, or as may be ordered by the Court.
 - c. USS shall retain the ability to outsource certain services to qualified third parties (provided any such services are also outsourced by USS for its own use) and pass any reasonable, out-of-pocket costs of outsourcing to USSC in the same proportion to the total USS costs as is currently allocated to USSC under the existing intercompany service arrangements, provided before outsourcing any services on the terms hereunder, USS discloses to USSC the details, including the cost and effect of such outsourcing upon USSC in sufficient time to allow USSC to seek any court order or other remedy it sees fit.
 - d. Notwithstanding anything contained herein, USS shall not provide any technical and engineering services associated with product development or sales to USSC. In addition, USS shall not support any field quality claims made against USSC. For greater certainty, USS will continue to provide technical support associated with informational technology, accounting and IT services.
- 2 **Existing LEW coal & iron ore contracts:** reduce the take or pay of raw materials under existing supply contracts to reflect the auto load reduction.

- a. USSC will accept all of the coal for the 2015 shipping season to be purchased for Lake Erie Works per the existing contract under the existing cost mechanism currently in place.
 - b. USSC will cancel 66,000 tons (approximately 2 boatloads) of iron ore and up to 165,000 additional tons of iron ore (approximately 5 boatloads), with USSC to advise USS of the final cancelled tonnage by October 31, 2015.
 - c. All iron ore purchased per the existing 2015 contract shall be priced per the existing cost mechanism currently in place. A schedule of timing for remaining deliveries in the 2015 shipping season will be proposed by USSC no later than October 31, 2015.

- 3 **Coke Conversion Agreement:**
 - a. USSC will receive approximately 331,000 tons of coal remaining to be delivered in 2015 under the Coke Conversion Agreement.

- 4 **USS would like to limit credit exposure for all services and raw material provided to USSC:**
 - a. Current payment terms will remain the same. COD not possible due to billing systems and available cash flow.
 - b. USS will receive a Court-ordered Critical Supplier Charge on property of USSC subordinate to the current court-ordered charges of the DIP Loan, Administrative Charge (Part 1), Directors' Charge and Permitted Priority Liens. For greater certainty, the Critical Supplier Charge shall rank ahead of Administrative Charge (Part 2).

- 5 Option of USSC to buy coke from USS from time to time at a price and in amounts to be mutually agreed upon at the time of purchase.

- 6 USS may request production of some non-automotive load in 2016 or beyond from USSC. USS may load orders on USSC by mutual agreement, for certain products and other items for non-OEM customers that USS cannot or chooses not to make.
 - a. USS to provide USSC with particulars of non-automotive orders, if any, it intends to continue to load at USSC to assist USSC with its forecasting processes.
 - b. Incremental opportunities to be identified and discussed.

- 7 USS to provide a 'warm hand off' to auto accounts. USS will not make any sales on USSC's behalf (apart from that contemplated in item 6).
 - a. At the request of USSC, USS will sell to USSC steel products not manufactured by USSC including but not limited to USS Galvalume, on commercially reasonable terms, which terms will include the cost of freight.
 - b. Sales Protocol attached as Schedule A is agreed to by the parties.

- 8 Stay with the existing schedule to move automotive parts in Q4 2015. In exchange, USS to release any interest in the \$5.5 mil DIP exit fee, with the intent that such funds will become immediately available to USSC to assist with its liquidity needs

and to be used for general corporate purposes in accordance with the Business Preservation Plan.

- 9 USS will provide USSC with funds solely for the purpose of payment of pension contributions due and owing under the Stelco Regulation between September 1, 2015 and December 31, 2015, under and in respect of the guarantee of USS of such pension payments, but such payments will not include any payments in respect of normal cost funding. For greater certainty, USSC will continue to make normal cost pension payments in respect of that period. To the extent USS makes payments as contemplated in this section, USSC shall acknowledge that USS has a claim against USSC in accordance with the terms of such guarantee and any other agreements between the parties. Both parties reserve their rights as to the status (contingent or non-contingent) and priority in respect of any such claim.
- 10 USS will support the Business Preservation Plan and approval of the Revised DIP Loan currently being sought by USSC. The parties will enter into good faith discussions forthwith regarding the timing and terms of a new SARP in which process USS will confirm that it is not, and will not be, a bidder. Provided that USSC is operating materially in accordance with the Business Preservation Plan, USS will not seek or support any process or court order prior to December 31, 2015 that could result in the liquidation of USSC and any such process or court order sought after December 31, 2015 will not take effect prior to January 31, 2016. In the event that a motion is brought in USSC's CCAA proceedings seeking the winding up of USSC's registered pension plans, USS reserves the right to seek to lift the CCAA stay to file an application in respect of USSC if USS deems it necessary or advisable to preserve the priority of its security PROVIDED that any such application will be stayed so long as the CCAA stay is in effect.
- 11 **Intellectual Property:** Parties agree to enter into good faith discussions to reach a mutually acceptable resolution in respect of intellectual property rights. Until closing of a transaction to sell all or substantially all assets of USSC, USSC is permitted to continue to use all intellectual property currently used by or available to it and owned or licensed by USS, if any, necessary to operate its business in the ordinary course, including retaining the right to use the name and brand "Stelco". If all intellectual property disputes between USS and USSC are not finally resolved by December 31, 2015, the parties shall then schedule a motion or motions before the CCAA Court to have such disputes determined prior to the end of Q2 2016.
- 12 **Employees:** Non-solicitation of USSC employees by USS and non-solicitation of USS employees by USSC.
- 13 **Insurance:** If possible, USS will continue to provide D&O insurance coverage and other similar insurance coverage that it provides for its subsidiaries in the ordinary course, subject to the payment of a reasonable portion of the premium by USSC. USS confirms that such insurance remains in place today under a policy that expires

- March 1, 2016. The parties agree to determine within the next 30 days if a renewal of the existing policy is possible and if not to cooperate in good faith to find a mutually acceptable solution that would provide comparable D&O coverage.
- 14 Parties to make reasonable commercial efforts, including the addition of other arrangements that are not expressly referred to herein, in order to implement the above.
 - 15 The parties acknowledge that USS and USSC are subject to anti-trust and anti-competition laws in their respective jurisdictions. Nothing herein is intended to violate any such laws. This agreement will be interpreted to exclude any violation of any applicable anti-trust or anti-competition law.
 - 16 USSC and USS may apply to Court from time to time for directions regarding the implementation of these arrangements and the supply and payment for intercompany goods and services.
 - 17 All terms agreed to herein are subject to Court approval and DIP lender approval.

APPENDIX B

2016 Automotive Contract Negotiating Protocol

The following is an outline of the business principles that the United States Steel Corporation (“USS”) and U. S. Steel Canada Inc. (“USSC”) agree to follow with respect to bidding for, the negotiation of and contracting for the production and supply of steel products for original equipment manufacturers (“OEMs”) in the automotive sector for supply in the calendar year 2016 and beyond. Notwithstanding anything contained in this Protocol, it is understood that USS and USSC will each independently determine and set pricing for the supply of steel products to OEMs.

Facts

- A. USSC filed for creditor protection under *Companies’ Creditor Arrangement Act* (Canada) (“CCAA”) on September 16, 2014.
- B. USSC is an indirect wholly-owned subsidiary of USS, an integrated North American steel producer and supplier to a number of industries, including the automotive manufacturing sector.
- C. Included among the intercompany goods and services provided by USS to USSC to date is the allocation to USSC of production of steel products for OEMs pursuant to contracts obtained by USS with OEMs.
- D. Issues have arisen between USS and USSC regarding contracts with OEMs for 2016 and the allocation of production.
- E. USS no longer wants to be responsible for the provision of an allocation to USSC of production for OEMs but is willing to direct its contacts in respect of negotiations with the OEMs to USSC to allow USSC to have an opportunity to obtain OEM supply contracts in respect of 2016 and beyond for and on its own behalf.

Therefore, in an effort to afford USSC the ability to bid on, negotiate for and contract for production volumes on its own behalf with the OEMs during the current negotiating season, USS and USSC agree to the following protocol:

1. The OEMs are being and will be informed that the quotations currently being submitted by USS are for and in respect of production on the plants owned and controlled by USS in the United States, not including the plants of USSC.

2. USS will inform all of the OEMs that, if any of them would prefer to source any of its production for terms involving 2016 and beyond from USSC, the OEM should contact Mike McQuade (“McQuade”), President and General Manager of USSC, or such other person as McQuade may so direct. USS will provide contact details for McQuade to the OEMs, and will provide contact details for the OEMs to USSC.
3. If requested by an OEM or USSC, USS will provide McQuade or other representatives of USSC with: (a) an introduction, in a form to be agreed acting reasonably and in accordance with the *Competition Act* (Canada), to the contacts of appropriate individuals within the organizational structure of the OEMs; and (b) subject to the below terms, such data and other information as are reasonably necessary to allow USSC to present bids or quotes to each OEM (whether jointly with USS or independently, as may be agreed between USS and USSC, each acting reasonably and in accordance with the *Competition Act* (Canada)), for and in respect of quotations for the supply of products for the 2016 calendar year or beyond.
4. For greater certainty, each of USS and USSC will be precluded from providing or obtaining pricing or other sensitive information in respect of the other’s current or pending quotations to the OEMs, but USS will provide to USSC, on a confidential basis, historical information in respect of products that have been produced by USSC plants in 2015 and such other information as USSC may reasonably request.
5. It is the purpose and intent of this protocol that USSC and its representatives shall be granted a reasonable and fair opportunity to bid, negotiate and contract for a share of the production and supply of steel products for the OEMs in respect of the 2016 production year and beyond commencing immediately. USS agrees to take such commercially reasonable steps as will afford USSC the reasonable and fair opportunity described herein.
6. USSC agrees that it is solely and independently responsible for the production and supply of any contracts awarded to it by any OEMs without guarantee, assurance or other involvement by USS in the performance of USSC’s contracts (but for greater certainty, this paragraph does not apply to intercompany goods and services, other than the procurement of OEM production).
7. Unless USS and USSC expressly agree otherwise for any specific transactions or opportunities pursuant to the transition arrangements to which they have agreed that govern intercompany goods and services for the balance of 2015, for 2016 and beyond, USSC agrees that:
 - (a) any contract awarded by any OEM to USS in respect of 2016 or beyond is solely for the benefit of USS and not USSC;

- (b) any contract awarded by any OEM to USSC in respect of 2016 or beyond is solely for the benefit of USSC and not USS;
 - (c) USSC has no right, beneficially or otherwise, to any contract entered into between USS and any automotive OEM in respect of production for the 2016 calendar year or beyond; and
 - (d) USSC has no right to and shall not request any loading of plants or production of any products in respect of any contracts that USS enters into with any automotive OEM in respect of supply of product to be delivered in 2016 or beyond.
- 8. USS and USSC both acknowledge and agree that this protocol is being entered into while time sensitive negotiations are commencing and/or are ongoing and that both parties will need to engage with each other immediately and cooperatively to maximize the effectiveness of this protocol for the benefit of both parties. They also acknowledge and agree that perfection is unlikely to be achieved and that both parties agree to act in good faith to achieve the goals described herein.
- 9. If either party has a complaint with respect to the conduct of the other under this protocol, they agree to engage the Monitor immediately with a view to resolving such complaint.
- 10. Both USS and USSC agree to provide access to such necessary and competent personnel as may be required to implement this protocol upon short notice over the coming weeks.