CITATION: Colin and Fenske v. Laughren et al., 2025 ONSC 6949
COURT FILE NO.: CL-25-00753536-0000
DATE: 2025-12-18

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN: FABRICE COLIN AND TOM FENSKE

Plaintiffs

FLOYD LAUGHREN, MICHAEL ATKINS, JENNIFER WITTY, CLAUDE LACROIX, DOMINIC GIROUX, PIERRE ZUNDEL, CAROL MCAULAY, LORELLA HAYES, IAN WOOD, JOHN POLLESEL, JUDITH WOODSWORTH AND ROBERT HACHÉ

Defendants

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Charles Sinclair*, for Fabrice Colin

Brendan Scott and Danielle Stampley, for Tom Fenske

Ashley Taylor, for the Court-appointed Monitor, Ernst & Young Inc.

Robert Stellick, for Floyd Laughren and Michael Atkins

D.J. Miller, for Laurentian University of Sudbury

HEARD AND DETERMINED: December 17, 2025

REASONS: December 18, 2025

ENDORSEMENT

[1] The plaintiffs, Fabrice Colin and Tom Fenske bring this motion for:

a. An order pursuant to Rule 12.08 of the *Rules of Civil Procedure* appointing Tom Fenske as the representative plaintiff on behalf of the following class of Laurentian University Staff Union ("LUSU") members and retirees, who together comprise all of the individuals on behalf of whom LUSU filed a Proof of Claim in the Laurentian University of Sudbury ("Laurentian") proceedings under the *Companies' Creditors Arrangement Act,* R.S.C., 1985, c. C-36 ("CCAA").

   i. former LUSU members who retired while members of LUSU and were receiving benefits from the University's Retiree Health Benefits Plan

("RHBP") as of February 1, 2021 (including the estates of such LUSU retirees);

ii. current and former LUSU members who were LUSU members as of February 1, 2021 and were eligible to claim RHBP benefits as of that date (including the estates of such LUSU members); and

iii. current and former LUSU members who were LUSU members as of February 1, 2021 and who had contributed to the RHBP at any time prior to that date (including the estates of such LUSU members) (the "LUSU Members").

b. An Order pursuant to Rule 12.08 of the *Rules* appointing Fabrice Colin ("Colin") as the representative plaintiff on behalf of the following class of Laurentian University Faculty Association ("LUFA") members and former members (including retirees), who together comprise all of the individuals on behalf of whom LUFA files a Proof of Claim dated July 31, 2021 in the Laurentian CCAA proceedings;

i. former members of the LUFA who retired while members of LUFA and were receiving RHBP benefits as of February 1, 2021 (including the estates of such retirees);

ii. current and former LUFA members who were LUFA members as of February 1, 2021 and were eligible to claim RHBP benefits as of February 1, 2021 (including the estates of such members);

iii. current and former LUFA members who were LUFA members as of February 1, 2021 and had contributed to the RHBP at any time prior to that date (including the estates of such members); and

iv. members of the Laurentian administration as of February 1, 2021 who were dues-paying members of LUFA at some time prior to February 1, 2021 and contributed to the RHBP at any time prior to that date (including the estates of such members) (the "LUFA Members")

c. An Order defining the "Settlement Class" as all LUSA and LUFA Members;

d. An Order defining the Common Issues for the Settlement Class as:

(i) did the Defendants negligently or fraudulently mispresent the state of the RHBP to the Settlement Class?; and

(ii) in the alternative, did the Defendants knowingly assist Laurentian's breach of trust with respect to the Settlement Class's RHBP contributions?

e. An Order approving the Settlement Agreement between the Plaintiffs and the Defendants executed on November 14, 2023 (the "Settlement Agreement");

f. An Order fully and finally releasing all Excluded D&O Claims held by any former, current or retired members of LUSU and LUFA;

g. An Order that the Defendants pay the settlement payment under the Settlement Agreement to Goldblatt Partners LLP, in trust, within thirty (30) days;

h. An Order approving the proposed settlement fund distribution methodology ("Plan of Distribution"); and

i. Ancillary relief.

[2] The evidentiary support for the requested relief is set out in the affidavits of Tom Fenske, Brendan Scott and Fabrice Colin.

[3] In addition, Ernst and Young Inc., in its capacity as Monitor of Laurentian in the CCAA Proceedings, filed its 19th Report (the "Report"). The Report provides an update on the status of the CCAA proceedings.

[4] The motion proceeded on an unopposed basis and with the support of the Monitor.

[5] The plaintiff, Tom Fenske is a member and president of the LUSU.

[6] The plaintiff, Fabrice Colin is a member of LUFA.

[7] The plaintiffs commenced this action against certain former officers and/or directors of Laurentian arising out of the loss of Laurentian's RHBP which was terminated after Laurentian obtained protection from its creditors on February 1, 2021 pursuant to CCAA.

[8] The plaintiffs contend that their RHBP was lost after funds that were contributed to the RHBP by certain members of the LUFA and LUSU appeared to have been co-mingled with the Laurentian's operating funds.

[9] The plaintiffs' claims, which arose out of the Directors and Officers Claims Process conducted during the CCAA proceedings were settled following a mediation in October 2023. The settlement agreement provides that the Canadian Universities Reciprocal Insurance Exchange ("CURIE"), the directors' and officers' liability insurer, will pay the all-inclusive sum of $3,000,000 to the two unions.

[10] The plaintiffs submit that Rule 12.08 provides the most efficient and cost-effective procedure for advancing the claims of LUSU and LUFA's members, former members and retirees. I agree.

[11] The plaintiffs also submit that the settlement achieved an excellent result for the class that the plaintiffs seek to represent. Upon approval, each class member will receive in excess of what they contributed to the RHBP. The settlement obviates the need for what would likely have been a lengthy lawsuit.

[12] The plaintiffs further submits that the proposed distribution methodology, pursuant to which each class member will receive their *pro rata* share of the settlement proceedings, is the most fair, convenient and cost-effective means of distributing the settlement proceeds to the class members.

[13] The Claim Process Order in the CCAA Proceedings provided for a process by which parties that intended to assert claims against directors and officers of Laurentian were required to submit proof of claims by no later than July 30, 2021 (the "Claims Bar Date").

[14] LUFA and LUSU each submitted proofs of claims on behalf of their members, terminated members and retirees against current and former directors and officers of Laurentian. Both proofs of claim were accepted by the Monitor.

[15] Claims filed against the directors and officers were not resolved in the CCAA proceeding. Instead, parties that filed director and officer ("D&O") claims were permitted to pursue them after the termination of the CCAA proceedings.

[16] Negotiations and discussions between counsel for LUFA and LUSU, counsel for CURIE, and counsel for the individual directors and officers commenced in October 2022 and the issues were subsequently resolved by mediation. Minutes of Settlement were signed on November 10, 2023.

[17] Pursuant to the settlement, Mr. Fenske is seeking to be appointed representative plaintiff on behalf of the LUSU Members and Mr. Colin seeks to be appointed to representative plaintiff on behalf of the LUFA Members.

[18] The settlement proceeds of $2.7 million (excluding the $300,000 earmarked for the unions' legal fees) exceed the value of the contributions made by the LUFA and LUSU Members to the RHBP.

[19] The $2.7 million in settlement proceeds will be split between the unions according to their *pro rata* shares based on their respective contributions to the RHBP.

[20] Counsel are of the view that the settlement represents a fair and reasonable compromise of the plaintiff's claims in this matter and that the proposed settlement is in the best interests of the LUFA Members and LUSU Members.

[21] Having reviewed the record and hearing submissions of counsel, I am satisfied that it is appropriate to grant the requested Rule 12.08 representation orders for both Mr. Fenske and Mr. Colin.

[22] I am also satisfied that it is appropriate to order that the "Settlement Class" is defined as all LUSU Members and LUFA Members and that the common issues for the Settlement Class are as set out in the Notice of Motion.

[23] I am also satisfied that the record establishes that the claimants on behalf of whom LUFA filed its proof of claim are the LUFA Members, as defined therein and no other current or former members of LUFA have excluded D&O Claims (as that term is defined in the CCAA Plan) with respect to the defendants.

[24] The record also establishes that the claimants on behalf of whom LUSU filed its proof of claim are the LUSU Members, as defined therein, and no other current or former members of LUSU have excluded D&O Claims with respect to the defendants.

[25] In addition, all excluded D&O Claims held by any former, current or retired members of LUSU and LUFA are released in accordance with the Terms of the Release attached to the proposed order as Schedule "A".

[26] The defendants are hereby ordered to pay the settlement payment under the Settlement Agreement within 30 days.

[27] The proposed settlement funds distribution methodology is also approved.

[28] In arriving at the foregoing conclusions, I am satisfied that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

[29] The motion is granted and an order giving effect to the foregoing has been signed.

Chief Justice G.B. Morawetz

Date: December 18, 2025