

Stelco Plan Receives Court Sanction

By Fred Myers

In comprehensive reasons released January 20, 2006, Mr. Justice Farley of the Ontario Superior Court of Justice (Commercial List) confirmed that Stelco Inc. had cleared a major hurdle on its path to emerging from insolvency protection.

Stelco received protection from its creditors in January 2004. It found itself immediately facing claims by its unions, among others, who asserted that Stelco was not insolvent. The case has produced several important precedents including the decision of Farley J. of March 2004 (leave to appeal to both the Court of Appeal and the Supreme Court of Canada denied) in which he expanded the definition of "insolvency" for the purposes of the CCAA. Also noteworthy is the decision of the Ontario Court of Appeal, overruling Farley J., and holding that the CCAA does not entitle the presiding judge to remove directors from the debtor's board of directors. The outcome of that decision has now been overruled by Parliament in recent amendments to the CCAA that expressly empower the CCAA Judge to replace board members.

In the most recent decision, Farley J. sanctioned a plan of arrangement supported by approximately 90% of Stelco's affected creditors, although the plan eliminated Stelco's existing equity altogether. A group of Stelco's current shareholders sought to establish that Stelco's equity has value and that the plan to eliminate its common shares amounted to a confiscation of equity value by creditors. The equity holders sought a sixty-day adjournment of the sanction motion during which the Monitor would conduct a Court-ordered asset or share sale process. In light of Stelco's prior unsuccessful efforts to raise capital, Farley J. wrote, "The redness of the visage of Stelco is not a true indication of health and well being; rather it seems that it is rouge to mask a deep pallor". Farley J. dismissed the request for a further sale process for "shop worn" Stelco as wishful thinking akin to a desperation "Hail Mary" pass on the last play of a football ! game.

Farley J. noted that sophisticated creditors had engaged in hard bargaining to determine a value for the post-restructuring equity of Stelco which equated to a recovery on the creditors' claims of approximately 65 cents-on-the-dollar. Although this compared favourably to the Monitor's predicted level of recovery by creditors of 13 to 28 cents in liquidation, Farley J. followed existing law in holding that a recovery by creditors of less than their full outstanding claims simply confirms Stelco's insolvency, and therefore that the shares of the equity holders have no economic value. Consequently, he held that a plan which accords the shares no value is fair and reasonable under the CCAA.

In all, the decision is a significant event in a remarkable insolvency proceeding that has changed the law, challenged traditional roles, been in the public eye for two years, and ultimately may have saved thousands of jobs and preserved and protected the long term viability of an important contributor to the Ontario economy.