

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) TUESDAY, THE 29TH DAY
JUSTICE HAINES)
) OF AUGUST, 2017



IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.

ORDER

THIS MOTION made by 2006905 Ontario Inc. ("**2006905**"), a creditor of 2Source Manufacturing Inc. ("**2Source**" or the "**Bankrupt**"), and upon reading the affidavit of Robert Glegg sworn August 22, 2017, and the affidavit of service of Amanda McLachlan sworn August 23, 2017, and on the consent of Deloitte Restructuring Inc., as Trustee in bankruptcy (the "**Trustee**"), and it appearing that, upon inquiry of 2006905, the Trustee has indicated that it will not commence or continue proceedings on behalf of the Bankrupt against United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and Dino Soave (collectively, the "**UTAS Defendants**"), which are defendants in the litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court File No. CV-17-567429-00) (the "**UTAS Ontario Proceeding**"), or against Messier-Dowty Inc., Messier-Bugatti-Dowty SA, Messier-Dowty Ltd., Messier-Dowty Mexico SA de CV and Messier-Dowty Suzhou Co. Ltd. (collectively, the "**Messier Defendants**"), which are defendants in litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court

File No. CV-15-537943) (the "**Messier Ontario Proceeding**"), was heard this day at 330 University Avenue, Toronto, Ontario.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and that this motion is properly returnable today and further service thereof upon any other parties is hereby dispensed with.

2. **THIS COURT ORDERS** that 2006905 may and is hereby authorized, pursuant to Section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the "**BIA**"), to commence and prosecute proceedings in its own name at its own expense and risk against any one or more of the UTAS Defendants in respect of any and all claims, rights or causes of action that the Bankrupt may have against any of the UTAS Defendants, including without limitation, the claims and causes of action plead by 2Source in the UTAS Ontario Proceeding (the "**UTAS Claims**").

3. **THIS COURT ORDERS** that 2006905 may and is hereby authorized, pursuant to Section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the "**BIA**"), to continue or commence and prosecute proceedings in its own name at its own expense and risk against any one or more of the Messier Defendants in respect of any and all claims, rights or causes of action that the Bankrupt may have against any of the Messier Defendants, including without limitation, the claims and causes of action plead by 2Source in the Messier Ontario Proceeding (the "**Messier Claims**").

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to:

- (a) execute an assignment immediately following the granting of this Order in the form and substance agreed upon between the Trustee and 2006905 (the "**Assignment**") assigning all of its right, title and interest in the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims to 2006905, for the benefit of 2006905 and any Participating Creditors (as defined below) in accordance with this Order, and such Assignment will vest in 2006905 all of the right, title and interest that the Bankrupt and/or Trustee have, had or shall have in the subject matter of the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims and any other claims or rights relating thereto; and
- (b) forthwith transfer to 2006905 and make available to 2006905 and any Participating Creditors as may join in the Proceedings pursuant to this Order all books and documents in support of or relevant to the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims.

5. **THIS COURT ORDERS** that notice of this order (the "**Notice**"), in form and substance acceptable to the Trustee and 2006905, along with a copy of the Order shall be served upon the other known creditors of the Bankrupt by the Trustee, as set out in the Bankrupt's statement of affairs filed in its bankruptcy proceeding on July 20, 2017 (the "**Known Creditors**"), by mailing the Notice by prepaid ordinary mail to each of the said Known Creditor(s) who have provable claims against the Bankrupt at their place of business or address as shown in the

Bankrupt's records. The Notice and a copy of this Order shall also be posted on the Trustee's website for the 2Source receivership and bankruptcy proceedings, together with a copy of 2006905's Motion Record for this Motion.

6. **THIS COURT ORDERS** that the service of the Notice shall be deemed effective on the fifth day following the date on which the Notice is mailed in accordance with paragraph 5.

7. **THIS COURT ORDERS** that 2006905 may commence any proceedings in respect of the UTAS Claims (the "**UTAS Proceedings**") and may continue and/or commence any proceedings in respect of the Messier Claims (the "**Messier Proceedings**" and, collectively with the UTAS Proceedings, the "**Proceedings**") immediately after the granting of this Order and prior to service of the Notice.

8. **THIS COURT ORDERS** that, subject to paragraphs 11 and 14 hereof, all benefits to be derived from the UTAS Claims, the Messier Claims and the Proceedings, together with any costs of same (collectively, the "**Benefits of the Proceedings**"), shall vest exclusively in 2006905 and such other Known Creditors who, within ten (10) days after the effective date of service of the Notice pursuant to paragraph 6 hereof, provide written notice to the Trustee that such Known Creditor agrees to contribute to the costs and expenses in the manner set out in paragraph 10 below and share in the risks of the Proceedings *pro rata* according to the amount of their respective proven claims (each Known Creditor so delivering a written statement and contributing to the costs and expenses, a "**Participating Creditor**"). Within five (5) days of the receipt of any such notice from a Participating Creditor, the Trustee will provide a copy of such notice to 2006905, who will provide it to the litigation counsel that it has appointed or will appoint with respect to each of the Proceedings in any jurisdictions where the Proceedings are

to be commenced or continued (collectively, "**Litigation Counsel**", which term shall include any new or replacement litigation counsel appointed by 2006905 in respect of the Proceedings).

9. **THIS COURT ORDERS AND DECLARES** that the vesting of the Benefits of the Proceedings in and to 2006905 and any Participating Creditors pursuant to this Order shall be free and clear of any and all rights, titles, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts (whether statutory or otherwise), assignments, executions, judgments, agreements, rights of distress, options, adverse claims, levies, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives.

10. **THIS COURT ORDERS** that Litigation Counsel shall invoice the Participating Creditors their Pro Rata Share (as defined below) of the costs and expenses of the Proceedings on a regular basis (each an "**Invoice**"), and a Participating Creditor shall fund its pro rata share (based on the aggregate amount of the proven claims of 2006905 and the Participating Creditors (the "**Pro Rata Share**")) of the fees, costs and expenses of the Proceedings by paying each Invoice delivered to such Participating Creditor within thirty (30) days of the date of such invoice.

11. **THIS COURT ORDERS AND DIRECTS** that the Benefits of the Proceedings shall be distributed by Litigation Counsel in the following manner:

- (a) first, to 2006905 and any Participating Creditor, to reimburse each of them for their Pro Rata Share of the costs and expenses incurred in bringing or continuing and prosecuting the Proceedings from and after the date of this Order, including without limitation, any contingency fees payable to Litigation Counsel;
- (b) second, to 2006905 and Robert Glegg in payment of their legal fees and costs incurred prior to the date of this Order in assisting 2Source to pursue the UTAS Claims and the Messier Claims and bringing this Motion;
- (c) third, to each of 2006905 and any Participating Creditor, their Pro Rata Share up to the amount of each of their net proven claim amounts, which constitutes the net amount of their respective proven claim after deducting the amount of any dividend distributed to them by the Trustee from the Bankrupt's estate; and
- (d) fourth, any surplus after paying the net proven claim amounts of 2006905 and the Participating Creditors in accordance with clause (c) above shall be paid to the Trustee, first , for payment of any unpaid fees and costs of the Trustee in administration of the Bankrupt's estate, next for the benefit of the estate of the Bankrupt (for greater certainty, including the Bankrupt's creditors), with proven claims who were not Participating Creditors and thereafter, if there are funds remaining, the Bankrupt's shareholders.

12. **THIS COURT ORDERS AND DECLARES** that Litigation Counsel and the Trustee shall incur no liability or obligation in carrying out the provisions of this Order and making the distributions Litigation Counsel is directed to make in accordance with this Order and Litigation Counsel shall be released from any and all liability in making each such distribution as directed hereunder, and no action or other proceedings shall be commenced against Litigation Counsel as a result of or relating in any way to their making distributions in accordance with this Order.

13. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in the Proceedings as provided for in paragraph 8 within ten (10) days of the effective date of service of the Notice pursuant to paragraph 6 hereof, they shall thereafter be excluded from participating in the Benefits of the Proceedings, subject to paragraph 11(d).

14. **THIS COURT ORDERS** that if a Participating Creditor at any time fails to pay its Pro Rata Share of the costs and expenses in accordance with paragraph 10 of this Order, Litigation Counsel shall send a notice of default to such Participating Creditor (a "**Notice of Default**"). Notwithstanding any other provision of this Order, if a Participating Creditor fails at any time to pay the amount outstanding set out in a Notice of Default within ten (10) days after receiving a Notice of Default, such Participating Creditor shall be and shall be deemed to be a non-participating creditor and shall not be entitled to any Benefits of the Proceedings, including, without limitation, any reimbursement of costs and expenses paid prior to a Notice of Default.

15. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, 2006905 shall have the sole right to control the conduct of the Proceedings in all jurisdictions, including the sole right to instruct counsel and make all decisions with respect to the Proceedings and the UTAS Claims and Messier Claims.

16. **THIS COURT ORDERS** that nothing in this Order shall override or vary the stay of the UTAS Ontario Proceeding pursuant to Section 106 of the *Courts of Justice Act*, ordered by Justice Monahan on July 19, 2017 and that the UTAS Proceedings shall not be commenced or continued in Ontario.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist 2006905, the Trustee, Litigation Counsel and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to 2006905, the Trustee and Litigation Counsel as may be necessary or desirable to give effect to this Order.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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