

**CITATION:** In Re DCL Corporation, 2025 ONSC 4976  
**COURT FILE NO.:** CV-22-00691990-00CL  
**DATE:** 20250825

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL CORPORATION (the "Applicant")**

**BEFORE:** Peter J. Osborne J.

**COUNSEL:** *Marleigh Dick & Martino Calvaruso*, for the Monitor

*Susan Ursel*, for the Pension Plan Members

*Josh Nevsky*, the Monitor, Alvarez and Marsal

**HEARD:** August 25, 2025

**ENDORSEMENT**

[1] The Court-appointed Monitor seeks:

- a. an order approving the Surplus Sharing Agreement dated August 18, 2025 (the "Settlement Agreement") entered into between the Applicants and Representative Counsel;
- b. a declaration that the Applicant is entitled to the surplus in the Applicant's Salaried DB Plan and Hourly DB Plan (together, the "Plans") for the purposes of section 79(3)(b) of the *Pension Benefits Act* (the "PBA"); and
- c. an extension of the stay of proceedings to and including January 31, 2026.

[2] The Monitor relies upon the 10<sup>th</sup> Report dated August 18, 2025, including the Appendices thereto. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

[3] Counsel for the Monitor confirms that the Service List, including but not limited to the Financial Services Regulatory Authority of Ontario ("FSRA"), was served with the motion materials on August 18, 2025.

[4] The relief sought today is unopposed and is strongly supported by Representative Counsel.

[5] The basis for the relief sought is fully set out in the motion materials.

[6] The Applicant is the sponsor of both Plans. On October 18, 2023, FSRA issued Wind-Up orders in respect of the Plans effective April 14, 2023.

[7] On February 11, 2024, FSRA approved Wind-Up Reports for both Plans, which provided that the allocation of any surplus funds would be dealt with in a subsequent report, and that once the liabilities of the Plans were settled, any surplus assets would be allocated in accordance with the governing documents of each Plan, or as otherwise agreed with the Applicant's plan members or ordered by the Court. Absent an agreement or court order determining surplus ownership, entitlement to any surplus would be adjudicated by FSRA, and any distribution of a surplus would in any case be subject to the oversight and consent of FSRA.

[8] Given the stated intention of the Monitor to bring a motion regarding surplus entitlement, on January 28, 2025, this Court granted the Representative Counsel Order appointing Representative Counsel to represent the interests of all members of the Salaried DB Plan and the Hourly DB Plan in these *CCAA* Proceedings, with respect to pension surplus entitlements of the Represented Parties under both Plans.

[9] Representative Counsel was entitled to form a committee, consisting of no more than three members of the Salaried DB Plan to advise with respect to that surplus, and a representative of Teamsters Chemical, Energy and Allied Workers Local Union No. 1979 to advise with respect to the Hourly DB Plan Surplus. Representative Counsel subsequently appointed one member of the Salaried DB Plan and one Union representative to serve as Representatives.

[10] Those appointments facilitated negotiations with respect to entitlement to the surplus balances in the Plans, culminating in the Settlement Agreement.

[11] As reflected in the 10<sup>th</sup> Report and as confirmed by counsel present today, Representative Counsel represented and protected the interests of the Represented Parties in such negotiations, and the Representatives themselves in their advisory in representative capacities, support the proposed settlement.

[12] Pursuant to the Settlement Agreement, the Net Surplus of each Plan will be divided between the Representative Parties and the Applicant, with 45% of the Net Surplus being paid to the Represented Parties and 55% being paid to the Monitor on behalf of the Applicant. The Net Surplus is composed of the Gross Surplus less Administrator Expenses and Agreed Expenses.

[13] The Settlement Agreement requires the Monitor to bring the motion before the Court today.

[14] I am satisfied that the proposed relief should be granted. This Court has jurisdiction to approve the settlement agreement pursuant to the general discretion granted by section 11 of the *CCAA*. In determining whether to exercise that discretion, the Court considers three factors:

- a. whether the settlement is fair and reasonable in the circumstances;
- b. whether the settlement will benefit the debtor and its stakeholders generally; and
- c. whether the settlement is consistent with the purpose and spirit of the *CCAA*.

See: *Robertson v. ProQuest Information & Learning Co.*, 2011 ONSC 1647 at para. 22; *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078 at para. 49; and *The Cash Store Financial Services Inc. (Re)*, 2015 ONSC 7538 at para. 14.

[15] I am satisfied that those factors are met here. The proposed settlement properly balances the interests of all parties and treats them equitably. See: *Nortel Networks Corp. (Re)*, 2010 ONSC 1708 at paras. 68-71. In my view, it benefits the creditors as a whole, while at the same time ensuring that objecting creditors, if any, are not suffering excess prejudice or having their rights unjustly confiscated. See: *Calpine Canada Energy Ltd. (Re)*, 2007 ABQB 504 at para. 62.

[16] The requested declaration is a required element of the settlement, and that is a technical requirement under the *PBA*. I am satisfied that this Court has jurisdiction to grant the requested declaratory relief, both from its jurisdiction to approve and facilitate the implementation of settlements under the *CCAA* and from its inherent jurisdiction.

[17] Moreover, such jurisdiction and the exercise thereof is expressly contemplated by section 79(3)(b) of the *PBA*. That statutory provision provides that the Chief Executive Officer of FSRA may consent to the payment of surplus funds to an employer only where such payment is authorized by a court order under section 77.11 of the *PBA*. Since section 78.11 provides that no surplus may be paid to an employer without the consent of the Chief Executive Officer, authorization, either by court order or under section 77.11, is effectively a prerequisite to the implementation of the Settlement Agreement.

[18] Section 77.11 of the *PBA* contemplates that either FSRA will make a determination regarding surplus entitlement based on plan documents, or that an agreement regarding surplus entitlement will be reached by, among other parties, at least two-thirds of the members of the pension plan.

[19] In the particular circumstances of this case, and given that it could take several months for FSRA to make any determination, and further given that any determination would require consideration of the governing documents of the Plans which may no longer exist, and that a vote among plan members would require considerable time and expense, the Monitor determined that proceeding on the basis of a negotiated solution with Representative Counsel, subject to the subsequent approval of both this Court and of FSRA, represented the most efficient path forward for the Applicant and its stakeholders, including the Representative Parties.

[20] The proposed settlement is fair and reasonable in the circumstances. It provides certainty by avoiding uncertain and lengthy alternative processes while simultaneously facilitating the conclusion of the *CCAA* Proceedings in a manner that maximizes creditor recoveries.

[21] The Settlement Agreement is the product of good faith negotiations, including by Representative Counsel appointed expressly for that purpose, and is supported by both that Representative Counsel and the Court-appointed Monitor. The Monitor is not aware of any creditors of the Applicant who object to its approval.

[22] As noted above, approval of FSRA is still required for the distribution in any event. FSRA is the regulator charged with overseeing the Plans generally and distributions. Specifically, as

provided for in the *PBA*. That additional safeguard and requirement provides an additional measure of protection to ensure the balancing of appropriate interests.

[23] Resolution of the issue of surplus entitlement is a key outstanding matter in this *CCAA* Proceeding, and its resolution will facilitate the ultimate wind-down of the estate of the Applicant in a timely manner while increasing the recovery available to the unsecured creditors of the Applicant.

[24] Approximately \$2.5 million (net of accrued unpaid professional fees and fees related to the remaining wind-down activities) will be available for distribution to Claimants who participated in the Claims Procedure. As set out in the 10<sup>th</sup> Report, this will increase projected recoveries for each Claimant from approximately 3.4% to approximately 8.1%.

[25] For all of these reasons, the Settlement Agreement is approved.

[26] I am also satisfied that the proposed stay extension should be granted pursuant to section 11.02 of the *CCAA*. Circumstances exist that make the order appropriate, and the Applicant has acted and is acting in good faith and with due diligence. The additional time will provide the Applicant the necessary stability and certainty so that the Monitor can complete the wind-down of the *CCAA* proceedings and, among other things, continue to pursue the distribution of the surplus balance from each of the Plans, including obtaining the required approval of FSRA.

[27] The Remaining Canadian Designated Amount Portion, together with any funds received by the Applicants in respect of the Hourly DB Plan and/or the Salaried DB Plan surplus funds, are expected to provide sufficient liquidity to fund the remaining costs through the proposed stay extension period.

[28] The proposed stay extension is approved.

[29] For all of these reasons, the requested relief is granted. I have signed both orders today and they are effective immediately without the necessity of issuing and entering.

  
Osborne J.