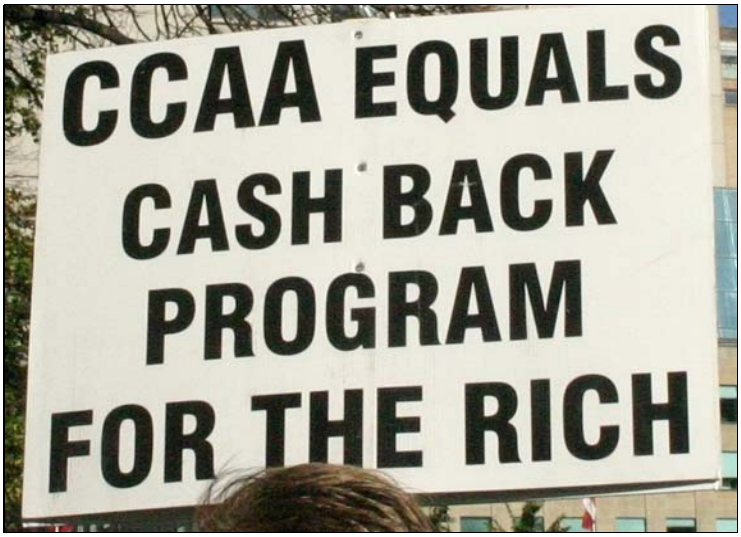
TML DAILY INTERNET EDITION
Daily On-Line Newspaper of the Communist Party of Canada (Marxist-Leninist)
CPC(M-L) HOME | TML Daily Archive | Le Marxiste Leniniste quotidien | E-Mail Us

June 2, 2016

CCAA Court Is No Place to Settle Important Matters for the People and Economy

The Arrogance of Monopoly Right



CCAA Court Is No Place to Settle Important Matters for the People and Economy
- **The Arrogance of Monopoly Right**
- **Denial of Workers' Rights in Bankruptcy Restructuring**
- **Bankruptcy Protection of U.S. Steel Canada and Essar Steel Algoma Is a Public Matter**
- **The Wily Foxes in Charge of the Henhouse**

CCAA Court Is No Place to Settle Important Matters for the People and Economy

The Arrogance of Monopoly Right

United Steelworkers, USW Local 8782, USW Local 1005 and the province of Ontario are appealing a ruling of the Ontario Superior Court to declare U.S. Steel's equity ownership of the former Stelco as debt to itself. The ruling under the authority of the *Companies' Creditors Arrangement Act* (CCAA) puts USS in a priority position to be paid upon the forced sale or liquidation of U.S. Steel Canada, the former Stelco. USS filed a Responding Factum in the Court of Appeal on May 27, in support of the original CCAA ruling declaring its equity in the wholly-owned subsidiary as debt to the parent U.S. corporation.

In the Factum, USS acknowledges:

"5. USSC is an indirect, wholly-owned subsidiary of USS. It is an integrated steel manufacturer and operates from two principal facilities: Hamilton Works and Lake Erie Works. Prior to its acquisition by USS, USSC was known as Stelco Inc.

"6. U. S. Steel Canada Limited Partnership (‘Canada LP') is a limited liability partnership formed under the laws of Alberta. Canada LP is an indirect wholly-owned subsidiary of USS.

"7. 1344973 Alberta ULC (‘ABULC') was an Alberta corporation. ABULC was the acquisition vehicle for USS's acquisition of Stelco."

USS purchased Stelco in 2007 with the deal closing on October 31. USS paid $1.1 billion for Stelco's "new shares" from a gang of Social Wealth Controlling Funds (SWCF) including Tricap Management Limited, Sunrise Partners Limited Partnership, Appaloosa Management L.P., and Stelco CEO Rodney Mott, who is from the U.S. and was parachuted in to facilitate the sell-out to USS. The SWCF gang seized control of Stelco during CCAA. Under Stelco's 2004-06 CCAA bankruptcy protection, those in control of the process eliminated the existing equity shares, essentially without compensation, and replaced them with new ones owned by themselves.

Only 18 months after Stelco emerged from CCAA, the SWCF gang flipped the company selling all the new shares to USS. U.S. Steel immediately delisted the new Stelco shares from the Toronto Stock Exchange making the U.S. parent company the sole direct owner of Stelco. USS also assumed $800 million in Stelco debt for a total initial investment of $1.9 billion.

Prior to a public announcement closing the deal, USS says a "loan agreement" was struck with the newly purchased and reorganized subsidiary, now called U.S. Steel Canada, to borrow from the parent company, at least on paper, the amount USS paid to the SWCF gang, approximately $1.9 billion in cash and assumed debt.

USS writes in the Factum:

"8. Canada LP and USSC, are parties to a loan agreement dated October 29, 2007 (the ‘Term Loan'), pursuant to which Canada LP made advances to USSC [...]

"9. As of the date USSC filed for protection under the CCAA (the ‘Filing Date'), the total amount outstanding under the Term Loan, including accrued interest, was C$1,847,169,934."

The initial paper trail to portray the purchase, investment and equity ownership of Stelco as debt to itself was followed with continuous attacks on production at both Hamilton Works and Lake Erie Works. The shutdowns and losses mounted year after year culminating in the idling of the blast furnace in Hamilton in 2010, and permanent cessation of steelmaking in 2013. Production for the best customers of high-value steel was transferred to USS plants in the United States.

In tandem with the crippling of production and mounting losses, USS created a further paper trail of further large loans to its Canadian subsidiary totalling $193,089,318 in 2010. The paper trail continued using its own wholly-owned financial institution called Credit Corp.

USS writes in the Factum:

"12. Pursuant to a security agreement dated January 28, 2013, as amended by agreement dated October 30, 2013 (the ‘Security Agreement'), USSC granted Credit Corp a general security interest over all of its personal property .

"13. Subsequent to the grant of security by USSC, USSC made further advances under the Revolver Loan of US$71,000,000.

"14. On November 12, 2013, Credit Corp, USSC, USS and two other USS affiliates entered into a further amendment and restatement of the Security Agreement providing security to USS and the two USS affiliates in respect of the provision of intercompany goods and services on credit by any of them to USSC."

The "secure" provision of goods and services now totals US$49,533,135, according to USS.

Less than a year after the "Security Agreement," USS put its wholly-owned Canadian subsidiary into CCAA bankruptcy protection on September 16, 2014.

USS writes:

"17. USS filed claims in the CCAA proceedings including unsecured claims (the ‘Debt Claims', which included amounts owing under the Term Loan and amounts accrued under the Revolver Loan prior to the grant of security) for C$1,847,169,934 and US$120,150,928 and secured claims (the ‘Secured Claims') in the amount of US$122,471,575."

Under CCAA, the debt claims of USS on its wholly-owned subsidiary are superior to most other claims and certainly any equity ownership, which is generally subordinate to most claims. The issue of equity ownership of USSC has disappeared into a deep pit supposedly to be resolved upon exiting CCAA when new ownership will claim all the assets or bits and pieces.

The paper trail of debt to itself appears to be carefully crafted insurance against a failure of U.S. Steel Canada, which was predictable given the crippling of production. Some suggest that the evidence points to something more sinister, a deliberate wrecking of Stelco as a competitor with minimum financial hardship to U.S. Steel owners once the payout from the forced sale of assets is complete. But why go into CCAA to sell the assets? The major difference in a sale of assets under CCAA bankruptcy protection and outside CCAA is the dumping of the pension, post-retirement benefits and other financial obligations, the $150 million loan to the Ontario government and other loans and payments to suppliers and contractors. The total on that front is more than what USS is now demanding as a priority debt to itself. Of course, this scheme would only work if USS could transform its equity into debt to itself and the CCAA authority and federal and Ontario governments bow down to monopoly right and negate public right.

Many Canadians would say this manoeuvring to serve narrow private interests is no way to build an essential sector of the basic economy. Something has to be done to save the situation for the

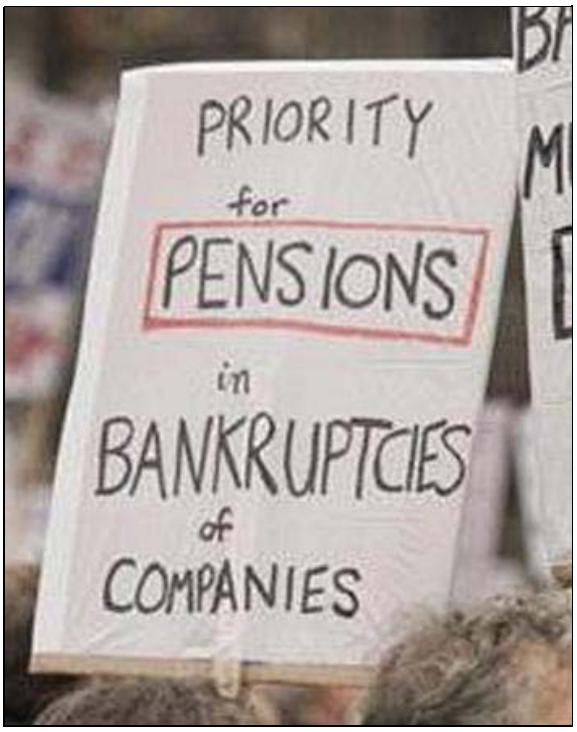
good of the Canadian economy, workers, pensioners and communities. The arrogance of monopoly right has to be curtailed. Public right to build the nation is paramount. Monopoly right to wreck the economy and nation must be confronted and defeated. If defence of the security of the people and their economy is to mean anything in practice, the state must act to stop U.S. Steel's wrecking and attack on Canada.

*(To be continued with a further review of the USS Factum. The entire USS Factum is available **here**.)*

Denial of Workers' Rights in Bankruptcy Restructuring

Depriving workers and retirees of their rights in restructuring should have no place in modern Canada

Ontario Superior Court Justice Frank Newbould is overseeing the bankruptcy protection and restructuring of Essar Steel Algoma under the federal authority of the *Companies' Creditors Arrangement Act* (CCAA). Justice Newbould admits publicly that he has no competence in economic matters and prefers to leave decisions in the hands of the financial oligarchy. *Soo Today* wrote on May 19, "Justice Newbould ruled that he was poorly equipped to second-guess a decision on financial viability made by Essar Steel Algoma in conjunction with 'highly qualified professionals with great experience in restructuring. Under our corporate law, a court should be loath to interfere with the good faith exercise of the business judgment of directors and officers of a corporation,' the judge said."



The statement belies belief. Does the judge not realize that he is overseeing the bankruptcy protection of a major corporation in an essential sector? Similar "professionals, directors and officers" put Algoma Steel into such a mess that it has sought bankruptcy protection under the CCAA not once but three times in the last 25 years! No root problem has been sorted out by these "highly qualified professionals" yet "under our corporate law," says the judge, the court system is nonetheless "loath to interfere with the good faith exercise of the business judgment of [these] directors and officers."

Newbould's subjective assessment of those in charge is irrelevant, as is his own admission of incompetence in economic affairs. The issue with the CCAA court, which renders it useless to sort out any economic problem, is the violation of the rights of the workers, salaried employees, retirees and people in the affected workplaces and communities. This alone renders the CCAA court invalid and no place to settle matters of such importance for the people and economy.

A modern economy cannot function without equilibrium in the social relations between those in control of the productive forces and the working class. "The good faith exercise of the business judgment of directors and officers of a corporation" must begin with the recognition of the rights of all those involved not just those who own and control the enterprise. The aim of the public authority overseeing the restructuring of a struggling company must serve the interests of all those affected not just the directors and officers of the enterprise or those presently in control of the bankruptcy process and restructuring.

The same backward view of non-interference in management rights is thrown at unions that organize to represent the interests of workers at an enterprise. Workers are told not "to interfere with the good faith exercise of the business judgment" of the professionals in control who represent the private interests of the owners and directors. Many in control of enterprises fight against equilibrium such as the present case in Hamilton where the German imperialists who control MANA refuse to negotiate with steelworkers and have locked them out for over three years. Workers are told they should have no rights, no say over their wages and working conditions and no right to veto decisions of management that go against the interests of the workers. The working class finds itself in a constant battle to organize to defend itself in all situations to uphold its dignity and affirm its rights and this includes under CCAA.

The disequilibrium in relations of production is a major reason why economic problems and crises keep recurring. No problem can be sorted out that serves the general public interest and brings some stability to the economy and society without equilibrium in the social relation between the working class and those who own and control social wealth. To deal with these situations and problems where a large company is in difficulty, a public authority is necessary, which assumes control and as first principle recognizes and upholds the rights of all those involved including importantly the active and retired workers.

The Ontario Superior Court is clearly not such a public authority and should not be involved in restructuring of companies. An alternative public authority serving the broad public interest must be constituted that can bring a climate of equilibrium to restructuring by upholding as first principle the rights of all those involved and affected, including importantly the active and retired working class.

Bankruptcy Protection of U.S. Steel Canada and Essar Steel Algoma Is a Public Matter

Justices Frank Newbould and Herman J. Wilton-Siegel of the Ontario Superior Court are respectively in charge of the bankruptcy restructuring of Essar Steel Algoma and U.S. Steel Canada (USSC) in the crucial steel sector of the economy. Algoma Steel employs over two thousand steelworkers and salaried personnel while USSC still has over a thousand, which is down substantially since U.S. Steel seized control of Stelco in 2007. The two companies bear the social and economic responsibility for tens of thousands of retirees and their dependents, buy

millions of dollars worth of supplies from local companies annually, and the value steelworkers produce provides enormous public revenue for the municipal, provincial and federal governments. Algoma Steel is estimated to affect in one way or another around 70 per cent of the 80,000 people who live in Sault Ste. Marie.

The fate of Essar Steel Algoma and USSC currently under bankruptcy protection of the *Companies' Creditors Arrangement Act* (CCAA) is not a private matter for certain powerful members of the financial oligarchy and court to decide. The fate of these monopolies is a public matter and should be in the hands of a competent public authority that upholds as first principle the rights of those affected and the well-being of the public interest and Canadian economy. Such a public authority should recognize and involve those directly affected by the restructuring and ensure that they and their peers have a say in the resolution and importantly a veto over any decisions that are taken.

The CCAA has proven in practice that certain powerful members of the financial oligarchy and their allies in the big law firms use the court to serve their narrow private interests skirting existing laws and social responsibilities for pensions, benefits and taxes. It must stop! The restructuring of major corporations is a public matter and concerns the public interest. Public right must not be overwhelmed by monopoly right in restructuring otherwise the process holds no legitimacy, stands in contempt of society, and will sort out no problem affecting the economy and common good.

From its practice serving monopoly right, the CCAA court has lost all legitimacy and should have nothing to do with restructuring companies in the basic sectors of the economy. A public authority must be established to deal with corporate restructuring. As first principle such a public authority must recognize and give pride of place to those directly affected and implicated in the operation of the company and their peers, including the workers, salaried employees, retirees, management, suppliers, and residents in the surrounding communities. No one or group should occupy a privileged position with a structured hierarchy of rights such as now exists within CCAA. The problems should be sorted out in the public interest and for the good of the broad common economy, not for the good of some narrow private interest such as that of U.S. Steel's demand to wreck and liquidate Stelco's assets and be first in line to seize whatever they bring in money.

Bankruptcy restructuring is a public not a private matter. The activities of big companies in the basic sectors affect the entire economy and the well-being and security of the people. The stability and viability of big companies are a concern of all Canadians, especially those workers and retirees directly affected. The public process to resolve the recurring problems confronting companies active in the basic sectors must serve the broad public interest and common good of the economy and not bend its will to the narrow private interests of those who own and control the company. Ownership must be seen as just one factor in the relations of production at a company that must submit to equilibrium with all the other factors if problems are to be resolved and the economy stabilized and rights secured. Direct experience has shown that no good comes from a process that deprives those affected of their rights. For many steelworkers and retirees of Algoma Steel this is the third time in CCAA and at Stelco the second time.

The Ontario and federal governments must stop the charade of CCAA restructuring of Algoma

Steel, U.S. Steel Canada and other big companies and constitute a legitimate public authority to deal with the economic problems in the public interest and common good.

The Wily Foxes in Charge of the Henhouse

Justice Newbould overseeing the bankruptcy restructuring of Essar Steel Algoma is quoted as saying he would never doubt the judgement of the professionals, directors and officers in control of the process under the *Companies' Creditors Arrangement Act* (CCAA). The statement itself throws contempt on the search to find viable solutions to the economic problems confronting Algoma Steel. The professionals involved in the CCAA are in a conflict of interest. For example, the lead lender of the Algoma Debtor-In-Possession (DIP) is Deutsche Bank. Under the CCAA process, the DIP lender has enormous power to manage the outcome to serve its private interests. Large creditors of Essar Steel Algoma have loudly and publicly accused Deutsche Bank of manipulating the restructuring and not allowing a viable outcome given the recent rapid rise of steel market prices.

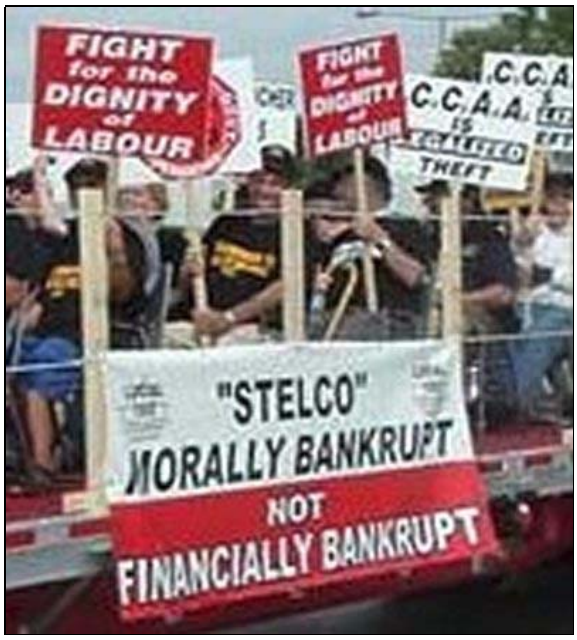
The professionals and officials in control under CCAA can also be the same people representing the same private interests who put the company into the current crisis in the first place. At the very least, these professionals should be harshly judged for not having found any solutions to the economic problems at Algoma Steel and Stelco and in the steel sector in general over the last decades. With constantly recurring crises, it has become obvious to many Canadians that an alternative to CCAA must be found that solves problems in the public interest and common good and does not submit to monopoly right.

Steelworkers with knowledge of the Essar Steel Algoma restructuring process say that rumours are constantly being circulated to push this or that competing private interest. For example, rumours were spread that the Essar Group did not have the financial backing to underwrite the restructuring. This talk is not made a matter of public knowledge with concrete evidence so that it can be discussed and verified. Instead, important issues are simply asserted and spread around to discredit competing interests such as the Essar bid, which was subsequently disqualified.

Whether Essar Group is financially sound or not was the specific issue that Justice Newbould said he was not competent to judge. After exposing his own ignorance in economic matters he ordered everyone involved to disqualify themselves as competent in economic matters as well and just accept without investigation the assessment of "highly qualified professionals with great experience in restructuring" and not "interfere with the good faith exercise of the business judgment of directors and officers of a corporation." Ah yes Justice Newbould, we should just let those wily foxes run wild in the henhouse without oversight and control because we all know, as you have ordered us to know and do, that their hearts and motives are pure and their hunger for chicken will not get the best of them.

The atmosphere of rumours and gossip is compounded by the official secrecy imposed on the participants. Even amongst the legal participants a hierarchy of privilege exists with certain people privy to inside knowledge and decision-making while others are not. This became starkly evident

when Algoma Local 2251 United Steelworkers was left out of the loop on the decision to exclude the Essar Group bid. How can real solutions be found to real problems in such a backward and suffocating atmosphere?



Not informing representatives from Algoma Local 2251 of the decision to exclude Essar Group from the next stage of bidding makes a mockery of the restructuring process. Justice Newbould further insults the steelworkers by stating that even if they had been informed they had no right to participate in making the decision so there is no point to revisit the ruling. This further exposes the arbitrariness and illegitimacy of the CCAA system and its incapacity to solve real problems.

Whether or not the Essar Group has the financial capability to underwrite the restructuring should be made public knowledge so that it can be investigated and verified. The justice rejects any public oversight or participation with his view that "he [is] poorly equipped to second-guess a decision on financial viability made by Essar Steel Algoma in conjunction with 'highly qualified professionals with great experience in restructuring.'" Everything is to remain secret and in the hands of privileged private interests that stand to gain from the outcome -- the wily foxes in charge of the henhouse. Little wonder that this marks the third time in CCAA for Algoma Steel.

The justice dismissed calls for a review of the decision saying the outcome would be irrelevant as union representatives have no say or control over the decision. Regarding this issue, the *Globe and Mail* reports that Mike Da Prat, President of Local 2251 said the union is unlikely to appeal the decision, as the CCAA court system does not favour unions. Workers and their allies across Canada are rapidly reaching a similar conclusion. The CCAA is an arbitrary broken system that is irreparable because its purpose is to serve the narrow private interests of the financial oligarchy. This is fundamentally wrong and damaging to the lives of Canadians and their economy, especially those directly affected by these CCAA restructurings.

The CCAA process clearly exposes it as the open dictate of finance capital over the people to serve narrow private interests in opposition to the public interest, economy and common good. The CCAA is not a place where an arrangement can be found that considers as fundamental the well-being and security of workers, retirees and all affected. Rather, the CCAA is a place of brutal dictate by "professionals," "directors and officers," which the justices then rubberstamp with their arcane rulings.

This is unacceptable to Canadians. A public authority responsible to the people and upholding the public interest must be constituted to deal with these restructurings of important monopolies in the basic sectors of the economy.