

June 16, 2016

Court Hearing of U.S. Steel Motion on Intellectual Property Rights -- June 13, 2016

Is U.S. Steel Losing Its Grip on USSC and Becoming Desperate?



Court Hearing of U.S. Steel Motion on Intellectual Property Rights

- Is U.S. Steel Losing Its Grip on USSC and Becoming Desperate?
- U.S. Steel Argues the Canadian Economy Does Not Belong to Canadians
- U.S. Imperialism in the Ontario Superior Court

Court Hearing of U.S. Steel Motion on Intellectual Property Rights -- June 13, 2016

Is U.S. Steel Losing Its Grip on USSC and Becoming Desperate?

U.S. Steel (USS), in yet another attack on the Canadian steel sector, says it owns the patents and related intellectual property for producing high-grade steel used at the former Stelco now under bankruptcy protection and called U.S. Steel Canada. USS declares none of the Stelco intellectual property presently used to manufacture high-grade steel can be sold under CCAA bankruptcy and subsequently used by the new owners.

The USS demand to deprive a restructured Stelco from using advanced production technique continues its long battle to eliminate the Canadian mills as a steel competitor. Industrial mass

production of steel cannot take place if the workers engaged in production are prohibited from using the underlying advanced science and technology.

The attacks on Stelco and subsequent wrecking of its productive capacity began almost immediately after the USS takeover in 2007. Putting its wholly-owned subsidiary into bankruptcy protection of the *Companies' Creditors Arrangement Act* (CCAA) in 2014 was a risky attempt to liquidate Stelco without losing the money it paid to purchase the company's equity. Through control of the CCAA process, USS planned to have its equity investment declared a debt to itself and jump to the front of the queue to seize the assets of a liquidated Stelco. To create a fiction of debt, it has constructed an elaborate electronic paper trail of financial transactions with its wholly-owned subsidiary.



The ownership of patents and intellectual property used by Stelco would normally be considered part of equity or fixed transferred-value in a similar manner as ownership of the machinery, tools and land. For USS to argue now that some of Stelco's assets or fixed transferred-value belong to it outside the bankruptcy protection of its wholly-owned foreign subsidiary and cannot be sold opens a can of worms. Would USS then be able to choose certain machinery, equipment or tools as not part of the CCAA bankruptcy and assets to be sold because it considers them special and originally supplied from the U.S. owner?

Yet USS argues that its interest in Stelco is the ownership of debt originating through loans from the parent company to its subsidiary for which it has concocted an elaborate scheme. But in a further exercise of monopoly hubris and right, USS wants to give itself the right to pick and choose what fixed assets are to be allowed to be sold under bankruptcy protection as part of the built up equity. If a new owner cannot use the advanced science and technology to make high-grade steel, this would further cripple any attempt to restructure the company.

The USS demand for control of patents and other intellectual property and its refusal to negotiate the issue with USSC, together with its recent unsuccessful attempt to terminate the bidding process quickly and begin either a forced sale or piecemeal liquidation of Stelco indicate that possibly it has lost control of the CCAA process of its subsidiary and is worried and panicky that current events are conspiring against it.

Loss of control by the original ownership group is not uncommon under CCAA. Those forces central in the CCAA process, especially the institutions supplying funds, the debtors-in-possession, and others including the top executive managers at the local level, have their own interests and agenda. These interests can begin to clash with those of the previous ownership group and take their own form and direction in contradiction with the private interests of the original ownership.

In the 2004-06 Stelco CCAA bankruptcy, the owners of equity played virtually no role except as victims. Predators within the process quickly seized control of the direction and assets, exited CCAA as new owners, and subsequently made a fortune by flipping Stelco to U.S. Steel merely eighteen months later. In the current Essar Steel Algoma CCAA, those in control of the process have excluded the original owners and parent Essar Group as a potential bidder on the Algoma

assets although the situation is still in flux and the Essar Group may make a comeback.

Two recent developments indicate that USS may be losing control of the CCAA process involving its Canadian Stelco subsidiary and is becoming desperate and more extreme in its actions and wants the process quickly terminated in its favour.

USSC Production and Revenue Are Improving

USSC had a better than anticipated April and has reacquired some of its high-value steel customers in the auto sector, which had been taken by USS and supplied from its U.S. mills. This is proving worrisome for U.S. Steel, which wants Stelco gone from the steel producing scene or at least to have itself in control of any rump production after exiting CCAA. A similar scenario of better sales and revenue at Essar Steel Algoma appears to be affecting the CCAA process in that case as well.



USSC revenue for April was just under \$100 million, \$13 million more than expected. Increased sales and higher average prices were cited as the reason. In his latest report, the CCAA monitor Alex Morrison overseeing the bankruptcy process said, "Over the past several months, Management has been successful in replacing the direct sales to automotive customers it lost in Q4 2015 by expanding

USSC's geographical customer base, selling greater volumes to a number of existing USSC customers and selling automotive product to the (automakers) indirectly."

In addition to greater sales, the monitor highlighted a higher average selling price for steel through April. Morrison said sales and income last year were negatively affected by U.S. Steel's decision to move production of its highest value steel to its plants in the United States. As this is turned around and customers begin to come back to USSC, this puts USSC into direct competition with USS, which is a new development that would not please those in control in Pittsburgh.

USSC Concludes Long-term Deal with Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is a USS competitor in the iron ore pellet business. In early June, USSC in a surprising announcement said it had concluded a new agreement with Cliffs for iron ore pellets. Cliffs subsequently said it will be restarting operations in August at its United Taconite mining facility (UTAC) in Minnesota, which has been shut down for an extended period.

Cliffs said the August restart of UTAC was made possible due to additional business recently contracted with U.S. Steel Canada to supply the majority of its iron ore pellet requirements for the third and the fourth quarters of 2016 and beyond. The new iron ore pellet tonnage ordered by USSC brings Cliffs' sales volume expectations for the year to a higher level than anticipated in the Company's previous forecast.

Lourenco Goncalves, Cliffs' CEO said with undisguised glee, "We are very pleased to announce an increase of our pellet supply to U.S. Steel Canada, who became a new Cliffs' client in 2016. U.S. Steel Canada used to be a captive client of its former parent company U.S. Steel Corporation. We are also very pleased to announce a higher sales guidance for 2016, thanks to this new business with U.S. Steel Canada, which came at a higher tonnage than we had previously anticipated. Most importantly, I am happy to bring our entire UTAC team back to work a lot earlier than previously announced last week." [1]

You can almost hear the grinding of teeth in Pittsburgh from this development. U.S. Steel's own iron ore pellet mine is partially shut down and in need of sales. Did Pittsburgh order its mining division not to conclude an agreement with USSC? Is Pittsburgh hoping instead for liquidation of Stelco or at the very least bringing Lake Erie Works back under its control? Either way no agreement with Cliffs would then be necessary as the supplying of iron ore pellets from its own mining facilities is an internal transfer of value.

On a related side issue, the Cliffs' agreement with USSC and another much larger 10-year contract for iron ore pellets signed with ArcelorMittal are having a big impact on competition in the sale of iron ore pellets, and also on the Essar Group and the CCAA process involving Essar Steel Algoma. Essar Group has almost \$2 billion tied up in constructing a new iron ore pellet mine and refinery in Minnesota south and west across the border from Essar Steel Algoma. Essar had hoped to conclude an agreement for pellets with ArcelorMittal but it opted out because Essar seems incapable of completing the Minnesota project on time. Essar was planning to supply its own Algoma steel mill from its new Minnesota mine but this has been put in doubt under CCAA. This leaves the Essar uncompleted mine with no customers at this point unless it can close a deal to purchase the former Stelco and regain control of Algoma as well.

A New Direction Is Needed to Stabilize the Economy and Provide Security for Canadians



Workers cannot be indifferent to the events at Stelco and Algoma Steel and not intervene with their own forceful demands. The present system is not working and needs a radical change. The working class has to be in the forefront of fighting for a change in the direction of the economy to stabilize and secure it, and develop relations of production in conformity with the economic base and in such a way that equilibrium is established.

In the basic sectors, a public authority is needed to exercise control over the direction of the economy and its productive facilities so that it favours the people and public interests. Ownership can no longer be considered the deciding factor in control of the basic sectors. Ownership has to be relegated to just one factor in the basic economy, which receives due consideration for its private interest for a return on its social wealth, but is not in control of the direction of the basic sectors. A public authority infused with the aim of the people to serve the public interest and economy, and which recognizes and upholds the rights of the actual producers must become the deciding and controlling factor.

The people can readily see all the interrelatedness of the production process and the need for harmony with the economy's different parts. This must start from a base in Canada that the people can control and over which public right has authority and the power to deprive monopoly right of its power to cause trouble such as what is happening at both Stelco and Algoma Steel and elsewhere.

The CCAA process is a tool of monopoly right. The court must be removed from the

restructuring of the basic sectors. A public authority must be established to control the restructuring that has the mission to serve the public interest and the stability and development of the Canadian economy, and which recognizes and upholds the rights of the active and retired working class.

The actual producers have to step forward as conscious participants in seeking a way forward and to ensure and guarantee the rights of all and that any public authority in control does not deviate from its social responsibilities.

To read the two press releases from Cliffs Natural Resources dealing with the agreements with USSC and ArcelorMittal see below.

For Your Information

Cliffs Natural Resources Inc. Announces Earlier Restart of United Taconite and Increases 2016 Sales Guidance

Press Release -- June 9, 2016

CLEVELAND, June 9, 2016 /PRNewswire/ -- Cliffs Natural Resources Inc. (NYSE: CLF) announced today that it will be restarting operations in August at its United Taconite mining facility (UTAC) in Minnesota. This restart will occur two months earlier than the anticipated October 2016 start date previously reported last week following the announcement of the Company's 10-year supply agreement with a major steel client. The August restart of UTAC was made possible due to additional business recently contracted with U.S. Steel Canada to supply the majority of their iron ore pellet requirements for the third and the fourth quarters of 2016. The new iron ore pellet tonnage ordered by U.S. Steel Canada brings Cliffs' sales volume expectations for the year to a higher level than anticipated in the Company's previous forecast. Accordingly, Cliffs is revising its 2016 sales volume guidance to 18 million long tons from its previous guidance of 17.5 million long tons. In addition, 2016 production volume guidance has been increased by 500,000 long tons to 16.5 million long tons.

Lourenco Goncalves, Cliffs' Chairman, President and Chief Executive Officer, stated: "The vast majority of the steel companies in North America are currently enjoying stronger order books, and their demand for high quality iron ore pellets from a reliable supplier is increasing. With that, Cliffs' business continues to gain very positive momentum, with the improvement of the existing business with our long established clients and the addition of new ones." Mr. Goncalves added: "We are very pleased to announce an increase of our pellet supply to U.S. Steel Canada, who became a new Cliffs' client in 2016. U.S. Steel Canada used to be a captive client of its former parent company U.S. Steel Corporation. We are also very pleased to announce a higher sales guidance for 2016, thanks to this new business with U.S. Steel Canada, which came at a higher tonnage than we had previously anticipated." Mr. Goncalves concluded: "Most importantly, I am happy to bring our entire UTAC team back to work a lot earlier than previously announced last week." United Taconite is comprised of an iron ore mine and a pellet processing plant, and is located in Minnesota. The operation employs approximately 450 employees.

Cliffs Natural Resources Inc. and ArcelorMittal USA LLC Enter Into New Long-term Iron Ore Supply Agreement through 2026

Press Release -- May 31, 2016

CLEVELAND, May 31, 2016 /PRNewswire/--Cliffs Natural Resources Inc. (NYSE: CLF) announced today that it has entered into a new long-term commercial agreement with ArcelorMittal USA LLC to supply tailor-made iron ore pellets for the next ten years through 2026. The new agreement will replace two existing agreements expiring in Dec. 2016 and Jan. 2017 and fill the entirety of ArcelorMittal's pellet purchase requirements from the previous contracts. The

new commercial agreement includes ArcelorMittal's total purchases of iron ore pellets from Cliffs up to 10 million long tons and preserves Cliffs' current position as ArcelorMittal USA's sole outside supplier of pellets. Accordingly, Cliffs will continue to be the sole pellet supplier of ArcelorMittal's Indiana Harbor West and Cleveland Works steelmaking facilities, while maintaining the current level of pellet supply to ArcelorMittal's Indiana Harbor East facility. The new contract also establishes a minimum tonnage of pellets of 7 million long tons, which is higher than the current minimum level from the two previous contracts combined.

Lourenco Goncalves, Cliffs' Chairman, President and Chief Executive Officer, said, "Cliffs is pleased to announce a major accomplishment within the execution of our strategy, which is the signature of a new 10-year pellet supply agreement with ArcelorMittal. We arrived at a mutually beneficial agreement, as both companies recognize the importance of bringing sustainable value to our respective businesses." Goncalves added, "The signing of the new supply agreement confirms what we have always stated regarding the strength of the business relationship between Cliffs and ArcelorMittal USA. The new agreement also removes any remaining uncertainty about Cliffs, and supports our conviction in the bright future of our Company, its employees, its shareholders, and all other stakeholders, including the communities in which we operate."

Pricing for the pellets under the agreement will be adjusted by the price of steel in the U.S. domestic market, and iron ore market based and general inflation indices. Based on current market levels, Cliffs anticipates an improvement in overall United States Iron Ore realized revenues per ton in 2017, when compared to the company's current guidance for 2016.



U.S. Steel Argues the Canadian Economy Does Not Belong to Canadians

U.S. Steel says Canadians have no right to use existing production technique at the former Stelco mills once the subsidiary is sold to new ownership. USS wants to deny the science of producing lightweight steel to competitors who may buy Stelco. This demand comes even though USS has put the Canadian subsidiary into bankruptcy protection. A forced sale under the *Companies' Creditors Arrangement Act* (CCAA) usually means the company is either liquidated with all assets sold piecemeal, including patents such as in the Nortel Networks case, or the complete operation is transferred to new ownership.



USS wants to pick and choose what Canadian assets are included in the bankruptcy. This arises because it considers Canada and the former Stelco as subjects that do not have an objective independent existence, being or rights. On a broad scale USS denies even its ownership of Canadian equity in the form of fixed assets as if they do not exist. This is to avoid losing them or their equivalent in money through the CCAA. Instead, USS has concocted a story of ownership of debt in Canada rather than ownership of anything real and productive with the exception of intellectual property. Within this scenario, USS hopes to liquidate Stelco's production capacity as a competitor but still have the bits and pieces sold to cover the so-called debts to itself. The

disappearance of equity ownership and its reappearance as debt to itself gives USS a veto in the restructuring as no new company would want to have \$2.2 billion in payment for the assets fly off to U.S. Steel with nothing left to deal with legitimate obligations such as pensions, other post-retirement benefits, creditors such as suppliers, contractors, and municipal taxes, the provincial debt of \$150 million and environmental liabilities.

Within this denial of ownership, USS wants to pick and choose what is considered Canadian fixed assets and what is considered not-Canadian even though existing in Canada and used, including production technique and science. USS dares to argue this from a position of monopoly right, even though knowing that science and technique are inseparable from modern productive forces. Machines need workers to operate, maintain and repair them, and workers cannot perform their work without the technical knowledge and science needed for the machines to produce effectively.

USS argues from a position of imperialist strength against what it considers a dominated country and working class. It would argue in a different way in the U.S. under Chapter 11, the U.S.-style CCAA type of bankruptcy. The patents and technique would automatically go to the new owners along with all other fixed assets. This was the case here also when Canadian-owned Stelco was last in CCAA from 2004-06 and exited under new ownership. The new owners seized all the assets from the former owners of Stelco including the science and technique of the productive forces.



The fact that this issue of intellectual property is even argued in the CCAA court and given credibility exposes the imperialist hubris of U.S. Steel and the submissive and dominated position of the Canadian authorities and the inability and unwillingness of the Ontario Superior Court and federal and Ontario governments to intervene and handle the matter in the people's favour and to defend the Canadian economy. A public authority is needed to take control of the situation with the aim of serving the public interest and Canadian economy.

The IP issue raises the importance of having an independent economy under the control of Canadians where research and development and scientific technique serve the people, and where foreign imperialists cannot deprive the workers of their right to continue to use the advanced technique in production. Control of the economy has been a central issue in this saga of U.S. imperialist domination of the Canadian steel sector right from the moment U.S. Steel took over Stelco.

Who controls the economy? Canadians have to step forward and declare forcefully: we control the economy! It is our responsibility because the economy and its productive forces affect everything in our lives. Ownership of the productive forces is a factor but just one factor under the control of the actual producers who are Canadians. Without control of their economy, Canadians do not have control over their lives, future and individual and collective security and well-being.



U.S. Imperialism in the Ontario Superior Court



U.S. Steel Canada (USSC, the former Stelco) put forward a motion requesting a court order under the authority of the CCAA, "establishing an intellectual property claims process ... to identify, determine and resolve intellectual property claims" involving the Canadian subsidiary and the foreign owner U.S. Steel (USS).

Counsel R. P. Streep representing USSC said that the Court approved Transition Agreement between USS and USSC from last October included a provision that both parties would attempt to work out the issue of intellectual property (IP) and intellectual property rights through discussion and negotiations. If negotiations failed then a motion would be submitted to the Court no later than the end of June 2016. USS was part of this agreement and while discussion has taken place on the issue, USS refused to provide a "definitive or particularized list of Intellectual Property (or Intellectual Property Rights) that USSC is using or has used in the past, that USS claims USSC (or any successor or assign of any of its assets or business) cannot continue to use." (Affidavit of William Aziz - the Monitor- Page 6 Para 16).

Streep contends the submitted procedural motion is meant to find a way to resolve the issue and is necessary for the sale of USSC, as the bidders need to know what they are buying. Streep said USS has had eight months since the October Transition Agreement to participate in negotiations but has so far refused even to identify what it claims as IP not to be included as USSC property.

The lawyers for USW, USW Local 1005, the Province, non-unionized employees and Monitor supported the motion so that the issue could be given a hearing and resolved. They contend that USS should clarify the IP it considers not part of the sales process and have a ruling on the validity of its claims, otherwise USS has an advantage over other stakeholders.

The lawyer for the Monitor insisted the motion is a procedural one meaning the Monitor would be required to review the USS IP claims and assess them. The lawyer did not want the court to think that the Monitor's support for the motion prejudiced the claims of USS, meaning the Monitor supports the contention of USS that its equity position in the former Stelco is a debt to itself, which must be paid first when the assets are sold and it has the monopoly right to do so. The Monitor wants this motion to clear up the issue of intellectual property ownership separate from other assets as that would facilitate the sales process by helping the bidders know how the issue affects their bids.

Lawyer Michael Barrack for USS said the U.S. company was not trying to involve itself in the sales process today, readily emphasising the "today." He predicted the claims process outlined in the motion was doomed to fail, presumably because USS will ensure its failure by not cooperating. The desire to see the failure of the sales process is consistent with the conduct of USS because it does not want a competing steel company to successfully restructure USSC.

Barrack suggested an alternative process of reciprocal disclosure presumably between USS and USSC. He seemed to imply that the USSC motion was designed to poach research and development in advanced high strength steel and new grades of high grade steel and other developments that have not reached the commercial level and USS was not willing to engage in such discussions. He said USSC has no right to and is not party to USS contractual agreements and licensing arrangements. Barrack said USS does not know what USSC has downloaded from certain "How to" books it was given or what intellectual property it has used and considers part of its technical base. He insisted USSC should disclose all its technical knowledge first. He suggested that after disclosure, USS could then say what it considers belongs to the parent company alone and what belongs to both. USS wants to know what USSC will be giving to its bidders in terms of IP information. USSC has to lead in disclosures Barrack insisted and then USS will respond.

Lawyer Strep countered that what USS was proposing would involve USS in the bid process as an overseer and gatekeeper, a position it should not have. Strep did not acknowledge that given the court's previous acceptance of U.S. Steel's transformation of its equity in Stelco into debt, this already makes USS an overseer and gatekeeper.

The judge passed the USSC motion but with the comment that "it goes too far," which he did not clarify other than to say he would make two deletions in his written decision. He ordered USSC and USS to work together on "language" regarding changes to the October Draft Order and determine what IP issues cannot be resolved and have to be brought back to the court.

Outside the courtroom the steelworkers and their allies in attendance discussed the proceedings. The court skirted around the issue, they said. Specifically, USS is worried about losing Protec as a customer. Protec has traditionally bought large quantities of steel from USSC until USS took the orders away. Protec demands and uses high grade steel that is very difficult to make and Stelco workers are experts in its production. The high value steel is a big money-maker for whoever produces it. USS appears worried about losing Protec and other customers to a revitalized USSC or Stelco. The Canadian mills know exactly what Protec wants and how to produce the steel the company and others demand. With Essar in the mix with a bid for USSC, it would be interested in supplying Protec and others with the desired high grade steel. The competition from a resurrected USSC is exactly what U.S. Steel sought to destroy in Canada. The issue of who controls Stelco and its future direction constantly raises its head. The CCAA has proven itself as no place to settle such crucial questions as monopoly right dominates public right. An alternative public institution is required that has the authority to deprive monopoly right of its power to overwhelm the public interest and deprive Canadians of their rights.



[PREVIOUS ISSUES](#) | [HOME](#)

Read *The Marxist-Leninist Daily*

Website: www.cpcml.ca Email: editor@cpcml.ca