Creditors suspected of wishing to eliminate a competitor: The Court refuses to annul their votes against a plan of arrangement

October 1, 2012

On May 14, 2012, the Honourable Normand Gosselin, J.S.C., ruled on an amended motion seeking the sanction of a plan of arrangement concerning a debtor, Norgate Métal Inc. ('Norgate'). The judgment is special in that Norgate asked the Court to annul some of the votes that had been cast against the plan of arrangement. Norgate submitted that the only reason why the creditors who cast those votes had voted against the plan was that they wished to eliminate a competitor from their industry.

Norgate operates in the construction industry and filed for protection under the *Companies' Creditors Arrangement Act* (the 'CCAA') in November 2011. In February 2012, Norgate filed its plan of arrangement and the meeting of the creditors was called for March 22, 2012. The plan of arrangement provided for division of the unsecured creditors into two classes, that is the protected creditors and the unprotected creditors. The protected creditors were likely to be paid 100% of the amount of their claims while the unprotected creditors could only hope to recover about 7%.

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