

**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 BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP. AND FINAL BELL CORP. (collectively the "Applicants", and each an "Applicant")**

Applicants

**FACTUM OF THE APPLICANTS  
(Returnable March 8, 2024)**

March 6, 2024

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Mike Shakra** (LSO# 64604K)

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

**Andrew Froh** (LSBC# 517286)

Email: [froha@bennettjones.com](mailto:froha@bennettjones.com)

**Jamie Ernst** (LSO# 88724A)

Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Tel: (416) 863-1200

Fax: (416) 863-1716

Lawyers for the Applicants

**TO: THE SERVICE LIST**

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## **PART I: OVERVIEW**

1. On February 28, 2024, the Applicants sought and obtained an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. The Initial Order was tailored to provide the Applicants with the relief reasonably necessary to maintain the *status quo* and continue their ordinary course operations during an initial 9-day period (the "**Initial Stay Period**").
3. Following the granting of the Initial Order, the Applicants have continued operations in the ordinary course of business, while also focusing efforts on developing a stalking horse sale process with the assistance of the Monitor (as defined below). The Applicants are seeking relief to implement the stalking horse sale process and ultimately a consensual restructuring that would see the Applicants' business emerge from these CCAA proceedings as a going concern with a deleveraged balance sheet.
4. To this end, the Applicants now seek an amended and restated Initial Order (the "**Amended and Restated Initial Order**") pursuant to the CCAA, among other things:
  - (a) extending the Stay of Proceedings (as defined below) to May 25, 2024; and
  - (b) increasing the Administration Charge, the Directors' Charge and the DIP Lender's Charge (each as defined below).
5. The Applicants also seek the following relief, among other things, pursuant to the SISPA Approval Order:

- (a) approval of the stalking horse share subscription agreement (the "**Stalking Horse Agreement**") solely for the purpose of acting as the "stalking horse" bid, including the bid protection provisions contained therein; and
- (b) approval of a sale and investor solicitation process (the "**SISP**") and the related procedures.

6. The relief being sought herein is the logical next step in these CCAA proceedings with a view to continuing the Applicants' business as a going concern and maximizing recoveries in the best interests of the Applicants' stakeholders.

7. In each case, the requested relief is supported by the Court-appointed Monitor in these CCAA proceedings (the "**Monitor**"), and Cortland Credit Lending Corporation ("**Cortland**"), in its capacities as agent for and on behalf of the Applicants' debtor-in-possession lenders (in such capacity, the "**DIP Lender**") and pre-filing first secured lenders.

## **PART II:       FACTS**

8. The facts underlying this motion are more fully set out in the affidavits of Matthew Milich, sworn February 28, 2024, and March 1, 2024 (together, the "**Milich Affidavits**").<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Milich Affidavits.

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<sup>1</sup> Affidavit of Matthew Milich sworn on February 28, 2024 [*Milich Affidavit*], Applicants' Motion Record dated March 1, 2024 at Tab 2, Exhibit "B" [*Motion Record*]; Affidavit of Matthew Milich sworn on March 1, 2024 [*Second Milich Affidavit*], Motion Record at Tab 2.

**A. The Need for these CCAA Proceedings and the Initial Order**

9. The Applicants are all indirect or indirect wholly owned subsidiaries of BZAM Ltd. ("**BZAM**").<sup>2</sup> BZAM is a publicly listed cannabis company that cultivates, processes and markets a range of cannabis products, including dried cannabis and cannabis extract products.<sup>3</sup>

10. Prior to the granting of the Initial Order, the Applicants were in a dire liquidity crisis and, absent the approval of the additional financing under the DIP Agreement (as defined below), would not have been able to meet their obligations as they become due.<sup>4</sup>

11. Having regard to the best interests of the Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, each of the Applicants' board of directors resolved to seek urgent relief under the CCAA. Accordingly, the Applicants sought, and on February 28, 2024, obtained the Initial Order.

12. Among other things, the Initial Order:

- (a) declared that the Applicants are parties to which the CCAA applies;
- (b) appointed FTI Consulting Canada Inc, as the Monitor;
- (c) stayed, until March 8, 2024, all proceedings and remedies taken or that might be taken in respect of the Applicants, the Non-Applicant Stay Parties (as defined in the Initial Order), the Monitor, the Applicants' directors and officers (collectively, the "**Directors and Officers**"), or affecting the Applicants' business or the Property

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<sup>2</sup> *Milich Affidavit*, *supra* note 1 at para 13; Motion Record at Tab 2, Exhibit "B".

<sup>3</sup> *Ibid* at para 40, Motion Record at Tab 2, Exhibit "B".

<sup>4</sup> *Ibid* at para 8, Motion Record at Tab 2, Exhibit "B".

(as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");

- (d) extended the benefit of the Stay of Proceedings and other aspects of the Initial Order to the Non-Applicant Stay Parties and their respective Directors and Officers;
- (e) approved the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") pursuant to a DIP facility agreement dated February 28, 2024 (the "**DIP Agreement**"), among TGOD, as borrower (the "**Borrower**"), the Applicants, as guarantors, and the DIP Lender;
- (f) granted certain priority charges (collectively, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**").<sup>5</sup>

13. The relief sought pursuant to the Initial Order was limited to that reasonably necessary to provide the stability, breathing room and financing required to prevent the immediate cessation of the Applicants' going concern operations and address their severe liquidity crisis during the Initial Stay Period.<sup>6</sup>

#### **B. The Applicants' Activities Since the Granting of the Initial Order**

14. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to stabilize and continue their ordinary course operations and advance their

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<sup>5</sup> Initial Order dated February 28, 2024 [*Initial Order*]; Motion Record at Tab 2, Exhibit "A".

<sup>6</sup> *Milich Affidavit*, *supra* note 1 at paras 155-156, Motion Record at Tab 2, Exhibit "B".

restructuring objectives.<sup>7</sup> In this regard, the Applicants have, with the assistance and oversight of the Monitor, among other things:

- (a) implemented a communication plan to advise key stakeholders of these CCAA proceedings and the granting of the Initial Order;
- (b) disseminated a press release through The Newswire informing investors and other interested parties that the Applicants had obtained protection pursuant to the CCAA;
- (c) conducted virtual town halls with the Applicants' employees regarding these CCAA proceedings and their impact on the business;
- (d) contacted key customers and suppliers;
- (e) coordinated an advance under the DIP Facility with the DIP Lender in accordance with the DIP Agreement; and
- (f) finalized the Stalking Horse Agreement and the SISP.<sup>8</sup>

### **C. The Stay of Proceedings**

15. The Stay of Proceedings under the Initial Order will expire at the end of the Initial Stay Period, being March 8, 2024.<sup>9</sup> Pursuant to the proposed Amended and Restated Initial Order, the Applicants are seeking to extend the Initial Stay Period to and including May 25, 2024 (the "**Stay Period**").<sup>10</sup>

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<sup>7</sup> *Second Milich Affidavit*, *supra* note 1 at para 24, Motion Record at Tab 2.

<sup>8</sup> *Ibid* at paras 24, 28, 35, Motion Record at Tab 2.

<sup>9</sup> *Ibid* at para 10, Motion Record at Tab 2.

<sup>10</sup> *Ibid* at para 6, Motion Record at Tab 2.



16. The Applicants' 13-week cash flow forecast (the "**Cash Flow Forecast**") demonstrates that the Applicants will have sufficient cash to support the Applicants' ordinary course operations and the costs of these CCAA proceedings throughout the Stay Period, provided the proposed Amended and Restated Initial Order is granted.<sup>11</sup>

#### **D. The Directors' Charge**

17. The Initial Order granted a charge in favour of the Directors and Officers in the maximum amount of \$5,300,000 as security for the obligations and liabilities that the Directors and Officers may incur during the Initial Stay Period (the "**Directors' Charge**").<sup>12</sup> Pursuant to the proposed Amended and Restated Initial Order, the Applicants seek to increase the Directors' Charge to the maximum amount of \$12,900,000.<sup>13</sup>

18. The increased quantum of the Directors' Charge was calculated based on an estimate of the maximum potential liability the Directors and Officers could have during the CCAA Proceedings, including any failure of the Directors or Officers to pay wages and source deductions, vacation pay, other employee-related obligations, sales tax, excise tax, and any other tax obligations.<sup>14</sup> The Monitor is supportive of the Directors' Charge and its increased quantum.<sup>15</sup>

#### **E. The Administration Charge**

19. The Initial Order granted a charge in favour of the Proposed Monitor, as well as counsel to the Proposed Monitor and the Applicants in the maximum amount of \$500,000 as security for

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<sup>11</sup> *Ibid* at para 26, Motion Record at Tab 2; The First Report of the Monitor dated March 6, 2024 at para 60 [*Monitor Report*].

<sup>12</sup> *Second Milich Affidavit*, *supra* note 1 at para 17, Motion Record at Tab 2.

<sup>13</sup> *Ibid*, Motion Record at Tab 2.

<sup>14</sup> *Second Milich Affidavit*, *supra* note 1 at para 18, Motion Record at Tab 2; *Monitor Report*, *supra* note 11 at para 48.

<sup>15</sup> *Second Milich Affidavit*, *supra* note 1 at para 18, Motion Record at Tab 2.

payment of their respective fees and disbursements incurred in connection with services rendered during the Initial Stay Period (the "**Administration Charge**").<sup>16</sup>

20. Pursuant to the proposed Amended and Restated Initial Order, the Applicants seek to increase the Administration Charge to the maximum amount of \$1,000,000.<sup>17</sup>

21. The Applicants still require the ongoing expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to complete a successful restructuring.<sup>18</sup> The Monitor and the DIP Lender are also supportive of the Administration Charge and its increased quantum.<sup>19</sup>

#### **F. The DIP Lender's Charge**

22. In connection with the commencement of these CCAA proceedings, the Applicants entered into the DIP Agreement with the DIP Lender to address their severe liquidity crisis (the "**DIP Loan**").<sup>20</sup> As referenced above, the Initial Order:

- (a) approved the Applicants' ability to borrow under the DIP Agreement up to the maximum amount of \$2,400,000; and
- (b) granted the DIP Lender a charge on the Property in the maximum amount of \$2,400,000 to secure all amounts advanced under the DIP Facility, plus all interest, fees, costs or other charges under the DIP Agreement (the "**DIP Lender's Charge**").<sup>21</sup>

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<sup>16</sup> *Ibid* at para 11, Motion Record at Tab 2.

<sup>17</sup> *Ibid*, Motion Record at Tab 2.

<sup>18</sup> *Ibid* at para 12, Motion Record at Tab 2.

<sup>19</sup> *Ibid* at para 13, Motion Record at Tab 2.

<sup>20</sup> *Ibid* at para 10, Motion Record at Tab 2.

<sup>21</sup> *Initial Order, supra* note 5 at para 29, 32, Motion Record at Tab 2, Exhibit "A".

23. The amount of the DIP Facility to be funded during the Initial Stay Period was limited to that which was necessary to ensure the continued operation of the Applicants prior to the return of the within motion.<sup>22</sup> The quantum of the DIP Lender's Charge sought pursuant to the Initial Order was correspondingly limited to the amount to be funded during the Initial Stay Period.<sup>23</sup>

24. Pursuant to the DIP Agreement, all advances under the DIP Facility are to be secured by the DIP Lender's Charge. Having regard to the Cash Flow Forecast and the Applicants' funding requirements during the Stay Period, the Applicants now seek to increase the quantum of the DIP Lender's Charge pursuant to the Amended and Restated Initial Order from \$2,400,000 to \$41,000,000 – the maximum borrowings available under the DIP Facility.<sup>24</sup>

25. While the DIP Facility provides for the maximum amount of \$41,000,000 of additional financing as a result of the creeping roll-up nature of the DIP Loan, the DIP Facility effectively only provides for approximately \$7,000,000 of new incremental liquidity in addition to the existing credit agreement with Cortland.<sup>25</sup>

### **G. Stalking Horse Subscription Agreement**

26. As a result of extensive discussions between the Applicants and 1000816625 Ontario Inc., a company ultimately controlled by BZAM's largest shareholder and current Chairman, 1000816625 Ontario Inc., agreed to act as the stalking horse purchaser (the "**Stalking Horse Purchaser**") in the SISP pursuant to the share subscription agreement dated March 1, 2024 (the "**Stalking Horse Agreement**").<sup>26</sup>

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<sup>22</sup> *Milich Affidavit* at para 130, Motion Record at Tab 2, Exhibit "B".

<sup>23</sup> *Ibid*, Motion Record at Tab 2, Exhibit "B".

<sup>24</sup> *Second Milich Affidavit*, *supra* note 1 at para 15, Motion Record at Tab 2.

<sup>25</sup> Pre-Filing Report of the Proposed Monitor dated February 28, 2024 at para 84.

<sup>26</sup> *Second Milich Affidavit*, *supra* note 1 at para 7, Motion Record at Tab 2.

27. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to assume all of the Stone Pine Debt (as defined in the Stalking Horse Agreement) and to pay cash consideration in an amount sufficient to pay back in full: (i) any amounts owing in respect of the DIP Facility, (ii) all amounts owing by the Applicants to Cortland pursuant to the Second Amended and Restated Credit Agreement dated January 8, 2024 (the "**Second ARCA**"), and (ii) amounts that cover certain restructuring expenses (the "**Cash Consideration**").<sup>27</sup>

28. The Stalking Horse Agreement includes an expense reimbursement fee up to a maximum of \$100,000 and a break fee of \$750,000 in the event that the Stalking Horse Purchaser is not the successful bidder (the "**Bid Protections**").<sup>28</sup> The Stalking Horse Agreement is subject to standard conditions being fulfilled or performed.<sup>29</sup>

#### **H. The SISP**

29. The proposed SISP provides for the Applicants and the Monitor to solicit interest in, and opportunities for, a sale of, or investment in, all or part of the Applicants' assets and business operations, commencing the same day as the granting of the SISP Approval Order.<sup>30</sup>

30. The SISP sets out, among other things, the manner in which non-binding letters of intent ("**LOIs**") and binding bids for a broad array of executable transaction alternatives will be solicited from interested parties and how a successful bid will be selected.<sup>31</sup>

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<sup>27</sup> *Ibid* at para 31, Motion Record at Tab 2.

<sup>28</sup> *Ibid* at para 32, Motion Record at Tab 2.

<sup>29</sup> *Ibid* at para 31, Motion Record at Tab 2.

<sup>30</sup> *Ibid* at para 35, Motion Record at Tab 2.

<sup>31</sup> *Ibid* at para 37, Motion Record at Tab 2.

31. The SISP is divided into two phases and provides for, *inter alia*, for the following deadlines:

- (a) all LOIs must be submitted by 5:00pm on April 8, 2024;
- (b) all Qualified Bids (as defined in the SISP) must be submitted by 2:00pm on April 29, 2024.
- (c) an auction (if any) shall be held by no later than May 3, 2024; and
- (d) an approval and sale order hearing shall be held no later than May 21, 2024, subject to the Court's availability.<sup>32</sup>

#### **I. The SISP Procedures**

32. The SISP sets forth certain procedures by which the Applicants and the Monitor intend to conduct the SISP for the sale of all or substantially all of the Applicants' business, including but not limited to conducting the solicitation process and an auction, if necessary. The Stalking Horse Agreement will serve as the stalking horse bid in the SISP and shall be subject to higher or otherwise better offers received as part of the SISP.<sup>33</sup>

33. While the Applicants are seeking bids to purchase some or all of their assets, the Applicants will also consider a broad array of executable transaction alternatives, provided it is otherwise a Qualified Bid.<sup>34</sup>

34. The base purchase price for a Qualified Bid (as defined in the SISP) must include a base cash purchase price equal to or greater than: (i) all outstanding obligations owing to Cortland

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<sup>32</sup> *Ibid* at para 38, Motion Record at Tab 2.

<sup>33</sup> *Ibid* at para 37, Motion Record at Tab 2.

<sup>34</sup> *Ibid* at paras 37, 44, Motion Record at Tab 2.

pursuant to the Second ARCA; (ii) all outstanding obligations owing to Cortland under the DIP Agreement, (iii) any obligations in priority to amounts owing under the DIP Agreement, including any Charges; (iv) the amount of \$250,000 to fund any professional fees to wind-down the CCAA, and (v) the amount of \$850,000 to satisfy certain bid protections (all of which is set out in more detail under the SISP).<sup>35</sup>

35. The Monitor and the Applicants believe that the SISP will result in a fair and equitable process that will fairly canvass the market in order to maximize value for the Applicants' assets resulting in the best outcome for the Applicants' stakeholders.<sup>36</sup>

### **PART III: ISSUES**

36. The issues to be considered on this motion are whether this Court should:

- (a) extend the Stay of Proceedings granted under the Initial Order to May 25, 2024;
- (b) increase the amount of the charges granted in the Initial Order;
- (c) approve the Stalking Horse Agreement solely for purposes of being the stalking horse bid; and
- (d) approve the SISP.

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<sup>35</sup> The Sales Solicitation Process at para 12, Motion Record at Tab 4.

<sup>36</sup> *Second Milich Affidavit*, *supra* note 1 at para 40, Motion Record at Tab 2; *Monitor Report*, *supra* note 11 at para 43.

## PART IV: LAW AND ANALYSIS

### A. The Stay of Proceedings Should be Extended

37. The Stay of Proceedings is currently set to expire on March 8, 2024.<sup>37</sup> Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary".<sup>38</sup> To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.<sup>39</sup>

38. The jurisdiction vested in Courts to stay proceedings under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA".<sup>40</sup> These purposes include, among others, enabling the continuation of the applicants' business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring.<sup>41</sup> Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides applicants with breathing room while they seek to restore solvency and arrange a "sale of assets in order to maximize recovery for stakeholders."<sup>42</sup>

39. Here, the proposed extension of the Stay of Proceedings is appropriate in the circumstances given that:

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<sup>37</sup> *Second Milich Affidavit*, *supra* note 1 at para 23, Motion Record at Tab 2

<sup>38</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 11.02(2) [CCAA]; *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

<sup>39</sup> CCAA, *supra* note 38, s 11.02(2) and s 11.02(3).

<sup>40</sup> *Canwest Global Communications Corp*, 2011 ONSC 2215 at para 24 [Canwest].

<sup>41</sup> *Ibid*; *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 15 [Century Services]; *Target Canada Co*, 2015 ONSC 303 at para 8 [Target]; *Re Timminco Limited*, 2012 ONSC 2515 at para 15 [Timminco].

<sup>42</sup> *Century Services*, *ibid* at para 14; *Target*, *ibid*; *Canwest*, *ibid* at paras 24-25; *Timminco*, *ibid*; *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para 19.

- (a) since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to stabilize and continue the Applicants' ordinary course operations, and advance their restructuring objectives, including by, among other things, executing a subscription agreement with the Stalking Horse Purchaser;
- (b) the Stay of Proceedings is necessary to prevent (i) enforcement action by the Applicants' contractual counterparties and (ii) disruption to the Applicants' business operations;
- (c) the proposed extension of the Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to continue the Applicants' ordinary course operations and to preserve value for the Applicants' stakeholders, including the Applicants' employees, suppliers and regulators;
- (d) the proposed extension of the Stay of Proceedings will enable the Applicants to facilitate the SISP;
- (e) provided that the proposed Amended and Restated Initial Order is granted, the Applicants are forecasted to have sufficient liquidity to support the Applicants' ordinary course operations and the costs of these CCAA proceedings throughout the Stay Period;
- (f) the Monitor is supportive of the proposed extension of the Stay of Proceedings and does not believe that any creditor will be prejudiced by such extension; and
- (g) the DIP Lender is supportive of the proposed extension of the Stay of Proceedings.<sup>43</sup>

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<sup>43</sup> *Second Milich Affidavit*, *supra* note 1 at paras 23-26, Motion Record at Tab 2; *Monitor Report* at paras 62, 64.



40. Taken together, the Applicants submit that the proposed extension of the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.

**B. Increase to Charges**

41. Pursuant to the Initial Order, the Applicants obtained an Administration Charge in the amount of \$500,000, a Directors' Charge in the amount of \$5,300,000 and a DIP Lender's Charge in the amount of \$2,400,000.<sup>44</sup> These amounts were obtained in consideration of sections 11.001 and 11.2(5) of the CCAA, as the limited amounts reasonably necessary for the continued operations of the Applicants in the ordinary course of business for the initial 9-day period. The Applicants are now seeking to increase these charges for the amounts reasonably required during these CCAA proceedings.

**1. Administration Charge**

42. The Applicants are seeking to increase the Administration Charge from \$500,000 to \$1,000,000.<sup>45</sup> The jurisdiction to grant a charge for professional fees is found in section 11.52 of the CCAA:

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

...

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act;...

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<sup>44</sup> *Ibid* at paras 11,14,17, Motion Record at Tab 2.

<sup>45</sup> *Ibid*, Motion Record at Tab 2.

43. Such a charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders.<sup>46</sup> In *Canwest Publishing*, Justice Pepall (as she then was) set out a non-exhaustive list of factors to be considered:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.<sup>47</sup>

44. In these circumstances, the Applicants' business is in a highly regulated and complex industry, there is no unwarranted duplication of roles, and all secured creditors have been provided notice. The Applicants also submit that the quantum of the proposed charge is fair and reasonable. The DIP Lender and the Monitor are also supportive of the increase to the Administration Charge.<sup>48</sup>

## **2. Directors' Charge**

45. In the Initial Order, the Applicants obtained a Directors' Charge in the amount of \$5,300,000 to secure the indemnity of the Directors and Officers for liabilities they may incur during the CCAA Proceedings, which may include unpaid accrued wages and unpaid accrued

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<sup>46</sup> [Walter Energy \(Re\)](#), 2016 BCSC 107, at para 41; [U.S. Steel Canada Inc.](#), 2014 ONSC 6145 at para 22.

<sup>47</sup> [Canwest Publishing Inc.](#), 2010 ONSC 222 at para 54.

<sup>48</sup> *Second Milich Affidavit*, supra note 1 at para 13, Motion Record, Tab 2; *Monitor Report*, supra note 11 at para 46.

vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.<sup>49</sup>

46. The amount of the Directors' Charge was limited to the estimated exposure up until the expiry of the Initial Stay Period. At this time, the Applicants seek to increase the Directors' Charge to \$12,900,000, which is an estimation of the maximum potential liability the Directors and Officers could have during these CCAA proceedings.<sup>50</sup> The Directors and Officers will only be entitled to the benefit of the Directors' Charge to the extent insurance coverage is unavailable or insufficient, and it is anticipated that payroll and sales tax liabilities will continue to be paid in the ordinary course.<sup>51</sup>

47. In granting the Initial Order, this Court found that the requirements for the Directors' Charge were satisfied, and the amount sought was appropriate and reasonably necessary for continued business operations during the initial 9-day period.

48. The criteria which satisfied the Directors' Charge in the Initial Order remain the same; the Applicants are merely seeking an increase to an amount that reflects an estimation of the maximum potential liability the Directors and Officers could have during the entirety of the CCAA proceedings.<sup>52</sup> The Monitor supports the increase of the Directors' Charge.<sup>53</sup>

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<sup>49</sup> *Monitor Report*, supra note 11 at para 49.

<sup>50</sup> *Second Milich Affidavit*, supra note 1 at para 17, Motion Record at Tab 2.

<sup>51</sup> *Milich Affidavit*, supra note 1 at paras 132-133, Motion Record at Tab 2, Exhibit "B".

<sup>52</sup> *Second Milich Affidavit*, supra note 1 at para 18, Motion Record at Tab 2.

<sup>53</sup> *Monitor Report*, supra note 11 at para 50.

### 3. DIP Lender's Charge

49. In accordance with section 11.001 and subsection 11.2(5) of the CCAA, the Initial Order limited the quantum of the DIP Lender's Charge to that which was reasonably necessary for the Applicants' continued operations in the ordinary course of business during the Initial Stay Period. Pursuant to the proposed Amended and Restated Initial Order, the Applicants now seek to increase the quantum of the DIP Lender's Charge from \$2,400,000 to \$41,000,000, reflecting the maximum borrowings available under the DIP Facility.<sup>54</sup>

50. The \$41,000,000 of additional DIP financing is not truly representative of the actual increase in funds being made available to the Applicants under the DIP Facility. The DIP Loan contains a "creeping roll-up" structure, meaning that all of the Applicants' post-filing receipts are applied to repay pre-filing obligations owing to Cortland under the Second ARCA, which has a maximum facility limit of \$34,000,000.<sup>55</sup> Accordingly, the increase in quantum effectively only provides for approximately \$7,000,000 of new incremental liquidity above what was already provided for under the pre-filing credit agreement with Cortland.

51. The criteria supporting the granting of the DIP Loan and the DIP Lender's Charge in the Initial Order are still present; the Applicants are merely seeking to increase the quantum of the DIP Lender's Charge to the maximum amount available to the Applicants under the DIP Loan. Additional draws under the DIP Loan are conditional on the increase to the DIP Lender's Charge being granted.<sup>56</sup> The DIP Loan is still required in order for the Applicants to continue to operate

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<sup>54</sup> *Second Milich Affidavit*, *supra* note 1 at paras 14-15, Motion Record at Tab 2.

<sup>55</sup> *Milich Affidavit*, *supra* note 1 at para 83, 112; Motion Record at Tab 2, Exhibit "B".

<sup>56</sup> *Second Milich Affidavit*, *supra* note 1 at para 16, Motion Record at Tab 2.

in the ordinary course during these CCAA proceeding and to implement the SISP with a view to sell the Applicants' business as a going concern.

52. In accordance with subsection 11.2(1) of the CCAA, notice of the increase being sought has been provided to the secured creditors and the proposed charge will not secure obligations incurred prior to the CCAA proceedings.

### **C. Approval of Stalking Horse Agreement**

53. Approval of the Stalking Horse Agreement is only being sought at this stage for purposes of approving it as the stalking horse bid and approving the Bid Protections. If the Stalking Horse Agreement is ultimately designated as the "**Successful Bid**", further approval from this Court will be sought.

54. Stalking horse agreements facilitate sales by establishing a baseline price and deal structure for superior bids from interested parties, maximizing the value of a business for the benefit of stakeholders and enhancing the fairness of the sale process. Stalking horse agreements have been approved concurrently with a sale process under the CCAA in other proceedings.<sup>57</sup>

55. In this case, the Stalking Horse Agreement is the product of extensive negotiations with the Stalking Horse Purchaser and provides a purchase price that establishes a valuable baseline that is intended to improve the bids received in the SISP. The subscription price under the Stalking Horse Agreement includes the (i) the assumption of the Stone Pine Debt, and (ii) the Cash

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<sup>57</sup> [\*Nortel Networks Corp. Re\* \(2009\), OJ No. 3169 at para 56 \[Nortel\]; \*In the Matter of a Plan of Compromise or Arrangement of Aralez Pharmaceuticals Inc and Aralez Pharmaceuticals Canada Inc.\* \(October 20, 2018\) \[Toronto, CV-18-603054-00CL\]\(#\) at para 6 \(Order Re Bidding Procedures Approval\) \(ONSC\); \*Clower Leaf Holdings Company\*, \(December 20, 2019\) \[Toronto, CV-19-631523-00CL\]\(#\) at para 6 \(Bidding Procedures, Stalking Horse Approval and Stay Extension Order\).](#)

Consideration.<sup>58</sup> This baseline will assist in maximizing the value of the Applicants' business as it may contribute to a higher valuation and assist in obtaining the highest and best bids for the Applicants' business. In addition, the Monitor is supportive of the approval of the Stalking Horse Agreement.<sup>59</sup>

56. The Stalking Horse Agreement includes Bid Protections of \$850,000 if the Stalking Horse Purchaser is not the Successful Bid.<sup>60</sup> Such a fee is intended to compensate stalking horse purchasers for the time and resources spent in developing a stalking horse agreement. Courts have recognized that some premium over simply providing for expenses may be expected, due in part to the risk that is undertaken by stalking horse purchasers. When determining whether certain reimbursement or break fees are reasonable, Courts in comparable CCAA proceedings have approved bid protections that range from 0% to 3.8%.<sup>61</sup> Agreeing to such payments is a matter of business judgment and therefore judicial deference is appropriate provided the decision falls within a range of reasonableness.<sup>62</sup>

57. The exact purchase price in the Stalking Horse Agreement cannot be determined at this time as, among other things, the amounts that will ultimately be drawn under the DIP Facility by the time that the transaction closes is unknown. However, if the DIP Facility is fully drawn, the Bid Protections in aggregate would amount to approximately 2.1% of the purchase price.<sup>63</sup> This

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<sup>58</sup> *Second Milich Affidavit*, *supra* note 1 at para 31, Motion Record at Tab 2.

<sup>59</sup> *Monitor Report*, *supra* note 11 at para 44.

<sup>60</sup> *Second Milich Affidavit*, *supra* note 1 at para 32, Motion Record at Tab 2.

<sup>61</sup> *Monitor Report*, *supra* note 11, Appendix "B"; See also [\*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd\*, 2012 ONSC 1750 at para 13.](#)

<sup>62</sup> [\*Danier Leather Inc. \(Re\)\*, 2016 ONSC 1044 at para 44 \[Danier\]; \*Brainhunter Inc. Re.\* \(2009\), 183 ACWS \(3d\) 905 at para 20 \[Brainhunter\].](#)

<sup>63</sup> *Monitor Report*, *supra* note 11 at para 42.

falls well below the range described in the above cases. In addition, the Monitor is of the view that the Bid Protections are reasonable in the circumstances and is supportive of its approval.<sup>64</sup>

58. The Applicants believe that the Stalking Horse Agreement, including the Bid Protections, is fair and reasonable in the circumstances.

#### **D. The SISP Should be Approved**

59. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.<sup>65</sup>

60. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole "economic community"?
- (c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) Is there a better viable alternative?<sup>66</sup>

61. While not technically applicable at the sale process stage, the factors set out in subsection 36(3) of the CCAA have also been considered when deciding whether to approve a sale process:

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<sup>64</sup> *Monitor Report*, *supra* note 11 at paras 42-44.

<sup>65</sup> *Nortel*, *supra* note 57 at paras 47-48; CCAA, *supra* note 38 s 11, s 36.

<sup>66</sup> *Nortel*, *ibid* at [para 49](#); *Brainhunter*, *supra* note 62 at [para 13](#); *Danier*, *supra* note 62 at [para 23](#).

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>67</sup>

62. In addition, given that the Stalking Horse Purchaser is a related party pursuant to subsection 36(5) of the CCAA, this Court may, after considering the factors referred to in subsection 36(3), grant the authorization if it is satisfied that:

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

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<sup>67</sup> [U.S. Steel Canada Inc. \(Re\), 2015 ONSC 2523](#) at para 8.



- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.<sup>68</sup>

63. In consideration of the above criteria and factors, the SISP should be approved as:

- (a) a sale of the Applicants' business will maximize value and allow the Applicants to continue as a going concern in the best interests of all stakeholders;
- (b) the SISP should encourage and facilitate bidding by interested parties and that no aspect of the SISP should discourage parties from submitting bids;
- (c) the combination of the Stalking Horse Agreement and the SISP will benefit the whole economic community as:
  - (i) the Stalking Horse Agreement sets a floor for other sale transactions and may contribute to a higher valuation, increasing the potential consideration to be received, while also providing an outcome that is beneficial to all stakeholders should the SISP not produce a better bid;
  - (ii) the SISP procedures are designed and intended to solicit the highest and best bid, and provide a market test for the benefit of all stakeholders;
- (d) the Bid Protections in the Stalking Purchase Agreement are within the range of rates identified by the Monitor as reasonable;

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<sup>68</sup> CCAA, *supra* note 38 s 36(4)-(5).

- (e) Cortland, in its capacity as DIP Lender, has been consulted and involved throughout and is supportive of the SISP procedures; and
- (f) the Monitor is supportive of the approval of the SISP procedures.<sup>69</sup>

64. The Applicants submit that the SISP and its procedures provide an appropriate framework that will fairly canvass the market to obtain the best offer for the Applicants' business which will maximize value for the Applicants' stakeholders.

65. For the above reasons, the Applicants submit that the SISP and its procedures should be approved.

## **PART V: RELIEF REQUESTED**

66. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,<sup>70</sup> and respectfully request that the proposed form of Amended and Restated Initial Order be granted.

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<sup>69</sup> Monitor Report, *supra* note 11 at para 43.

<sup>70</sup> [In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. \(January 29, 2021\), Toronto, CV-21-00655373-00CL](#) (Order) (ONSC); [In the Matter of a Plan of Compromise or Arrangement of Superette Inc., Superette Ontario Inc., 2659198 Ontario Inc., 2662133 Ontario Inc., 2662134 Ontario Inc. and 2662135 Ontario Inc. \(September 9, 2022\), Toronto, CV-22-00686245-00CL](#) (Order) (ONSC); [In the Matter of a Plan of Compromise or Arrangement of MPX International Corporation, BioCannabis Products Ltd., Canveda Inc., The CinG-X Corporation, Spartan Wellness Corporation, MPXI Alberta Corporation, MCLN Inc., and Salus BioPharma Corporation \(August 4, 2022\), Toronto, CV-22-00684542-00CL](#) (Order) (ONSC); [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 Just Energy Group Inc., et. al \(August 18, 2022\), Toronto, CV-21-00658423-00CL](#) (SISP Approval Order)(ONSC); [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 Aleafia Health Inc. et.al. \(August 22, 2023\), Toronto, CV-23-00703350-00CL](#) (Order)(ONSC),

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6<sup>TH</sup> DAY OF MARCH 2024**

*Bennett Jones LLP*

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Bennett Jones LLP

## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. [\*Brainhunter Inc. Re.\* \(2009\), 183 ACWS \(3d\) 905](#)
2. [\*Canwest Global Communications Corp.\*, 2011 ONSC 2215](#)
3. [\*Canwest Publishing Inc.\*, 2010 ONSC 222](#)
4. [\*Century Services Inc v Attorney General \(Canada\)\*, 2010 SCC 60](#)
5. [\*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd\*, 2012 ONSC 1750](#)
6. [\*In the Matter of A Plan of Compromise or Arrangement of Clover Leaf Holdings Company.\* \(December 20, 2019\) Toronto, CV-19-631523-00CL \(Bidding Procedures, Stalking Horse Approval and Stay Extension Order\) \(ONSC\).](#)
7. [\*Danier Leather Inc. \(Re\)\*, 2016 ONSC 1044](#)
8. [\*In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et.al.\* \(August 22, 2023\), Toronto, CV-23-00703350-00CL \(Order\)\(ONSC\),](#)
9. [\*In the Matter of a Plan of Compromise or Arrangement of Aralez Pharmaceuticals Inc and Aralez Pharmaceuticals Canada Inc.\* \(October 20, 2018\) Toronto, CV-18-603054-00CL \(Order Re Bidding Procedures Approval\) \(ONSC\)](#)
10. [\*In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc.\* \(January 29, 2021\), Toronto, CV-21-00655373-00CL \(Order\) \(ONSC\)](#)
11. [\*In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc., et. al\* \(August 18, 2022\), Toronto, CV-21-00658423-00CL \(SISP Approval Order\)\(ONSC\);](#)
12. [\*In the Mater of a Plan of Compromise or Arrangement of MPX International Corporation, BioCannabis Products Ltd., Canveda Inc., The CinG-X Corporation, Spartan Wellness Corporation, MPXI Alberta Corporation, MCLN Inc., and Salus BioPharma Corporation\* \(August 4, 2022\), Toronto, CV-22-00684542-00CL \(Order\) \(ONSC\)](#)
13. [\*In the Matter of a Plan of Compromise or Arrangement of Superette Inc., Superette Ontario Inc., 2659198 Ontario Inc., 2662133 Ontario Inc., 2662134 Ontario Inc. and 2662135 Ontario Inc.\* \(September 9, 2022\), Toronto, CV-22-00686245-00CL \(Order\) \(ONSC\)](#)
14. [\*Laurentian University of Sudbury\*, 2021 ONSC 1098](#)
15. [\*Nortel Networks Corp. Re.\* \(2009\) OJ No. 3169](#)
16. [\*Re Clover Leaf\*, 2019 ONSC 6966](#)
17. [\*Re Timminco Limited\*, 2012 ONSC 2515](#)
18. [\*Re US Steel Canada Inc.\*, 2014 ONSC 6145](#)
19. [\*Target Canada Co.\*, 2015 ONSC 303](#)
20. [\*U.S. Steel Canada Inc. \(Re\)\*, 2015 ONSC 2523](#)
21. [\*Walter Energy \(Re\)\*, 2016 BCSC 107](#)

## SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

### Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

#### Section 11.001

##### **Relief reasonably necessary**

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136

#### Section 11.02

##### **Stays, etc. – initial application**

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

## **Section 11.2**

### **Interim financing**

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

**Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 1242005, c. 47, s. 1282007, c. 36, s. 652019, c. 29, s. 138.

**Section 11.51**

**Security or charge relating to director's indemnification**

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

**Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Restriction — indemnification insurance**

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

**Negligence, misconduct or fault**

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 1282007, c. 36, s. 66.

**Section 11.52**

**Court may order security or charge to cover certain costs**

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Section 36**

#### **Restriction on disposition of business assets**

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

#### **Notice to creditors**

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

#### **Factors to be considered**

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.



**Additional factors — related persons**

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

**Related persons**

For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b) test

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. Court File No.: CV-24-00715773-00CL  
C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM MANAGEMENT INC.,  
BZAM CANNABIS CORP., FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN  
LTD., THE GREEN ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD  
HOLDING CORP. AND FINAL BELL CORP.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

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**FACTUM OF THE APPLICANTS**

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**BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Mike Shakra (LSO# 64604K)

Tel: (416) 777-6236

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

Andrew Froh (LSBC# 517286)

Tel: (604) 891-5166

Email: [froha@bennettjones.com](mailto:froha@bennettjones.com)

Jamie Ernst (LSO# 88724A)

Tel: (416) 777-7867

Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Lawyers for the Applicants