

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**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.**

Applicants

**WRITTEN OPENING SUBMISSIONS OF THE CLAIMANT,  
FINAL BELL HOLDINGS INTERNATIONAL LTD.  
(SUMMARY TRIAL RETURNABLE APRIL 22 AND 23, 2024)**

April 17, 2024

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TO: **THE SERVICE LIST**

1. As the Monitor delivered its second report after the agreed-upon deadline for the timetable leading up to the trial on April 22, Final Bell is delivering this brief supplementary opening statement to respond to the Monitor's report.
2. In short, the Monitor's report serves as a useful example why the Ontario *Rules of Civil Procedure* do not provide for delivery of report to the Court from a third party that does not have an interest in the outcome containing to assess the merits of a claim that is proceeding to trial. The Monitor's analysis is flawed and incomplete. It does not reference the legal principles of rescission, equitable remedies, or interpretation of contracts, and it does not attempt to interpret key provisions of the SEA that are central to this dispute.
3. For this reason, Final Bell submits that the Monitor's report is not of assistance to this Court and its assessment of the issues is unreliable.
4. For example, the Monitor's comments on the financial disclosure in the FBC transaction reviews the publicly disclosed BZAM financial information, which as of the date of execution and closing of the SEA, was only current up to September 30, 2023. The Monitor notes that, based on those financials, it would have concerns about BZAM's ability to continue operating as a going concern.<sup>1</sup>
5. The Monitor then attempts to scrutinize Final Bell's due diligence process via a "blame the victim" approach to the legal issues and criticizes Final Bell for relying on BZAM's representations. This assessment mistakenly assumes that Final Bell had a duty to attempt to discover whether BZAM was misrepresenting its future performance, when in fact the duty was

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<sup>1</sup> Monitor's Second Report, ¶51-55.

on BZAM to avoid knowingly or recklessly misrepresenting its future performance to Final Bell. As a matter of principle, the Monitor's analysis adopts a flawed line of reasoning for a rescission claim.

6. In fact, the Monitor's analysis of BZAM's representations in its *pro forma* statements, in light of the proper legal principles, **supports** Final Bell's claim. The Monitor's critique of BZAM's standalone model suggests that, with hindsight, there is now good reason to believe BZAM intentionally or recklessly misrepresented its future assumptions to Final Bell in order to present a more positive outlook for its 2024 standalone operations than it knew was achievable.<sup>2</sup>

7. Moreover, the Monitor's report includes unnecessary and unhelpful speculation concerning the extent of Final Bell's due diligence review of Final Bell's records. The Monitor assumes, without evidence, that BZAM did not provide Final Bell with most of the information it requested from BZAM. **But that assumption is not supported by the evidentiary record.** While Keith Adams acknowledged he could not find a non-hard-coded version of the BZAM Standalone Model in his records, Adams was not cross-examined as to whether BZAM failed to respond to other due diligence requests, and Milich's comprehensive affidavit did not allege that BZAM failed to provide Final Bell with requested information.

8. Final Bell respectfully submits that the Monitor should not have speculated as to a state of affairs that is not supported by the evidence. BZAM's counsel cross-examined Adams and Jessel for several hours combined and did not suggest to either witness that BZAM failed to provide Final Bell with requested information or documents, other than a narrow line of question about the non-hard-coded BZAM Standalone Model. If BZAM intends to introduce this evidence

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<sup>2</sup> See Monitor's Second Report, ¶56-64.

through cross-examination of Adams or Jessel at the trial, it will have an opportunity to do so. But failing that, it would be improper for BZAM, and by extension the Monitor, to submit to this Court that it can conclude as a matter of fact that BZAM failed to respond to “most” of Final Bell’s requests.

9. The Monitor’s views on other issues are similarly flawed. The real issue for the Court to determine is whether BZAM’s misrepresentations were made knowingly and/or recklessly, which requires a more thorough examination of what **BZAM** knew, and when it knew it, as compared to what **Final Bell** knew. The Monitor failed to assess this issue.

10. The Monitor’s assessment of rescission as a remedy is also flawed, as it speculates as to an outcome that is not supported by the evidentiary record. BZAM’s largest shareholder, second secured creditor, and stalking horse bidder are all controlled by the same person – Bassam Alghanim. In this summary trial, Cortland delivered a responding record without notice to Final Bell and is participating as an interested party. The stalking horse bidder is not participating in the trial and put in no evidence. That is an intentional move on its part. If the stalking horse bidder intended to adduce evidence stating that it would withdraw its bid if the SEA is rescinded, that evidence would be trial tested.

11. The Court cannot infer a crucial fact concerning the available remedy without any evidence in the record to support that assumption. Such an inference would be a reversible error. The Monitor’s report invites the Court to make such an error by going down the speculative road. The Court should not accept that invitation.

12. Viewed through the appropriate lens, Final Bell submits that the Monitor’s critique of BZAM’s *pro forma* model supports its claim, even if the Monitor’s analysis is flawed as a matter

of legal principle. Otherwise, the report is unhelpful and should not inform the Court's weighing of evidence or findings of fact and/or law in the upcoming trial.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17h day of April, 2024.



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Court File No. CV-24-00715773-00CL

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PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY WRITTEN SUBMISSIONS  
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