

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

IMV Inc., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 23-10589 (KBO)

(Joint Administration Requested)

**VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN MAIN PROCEEDING,
(II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) RECOGNITION OF
AMENDED AND RESTATED INITIAL ORDER, AND
(IV) GRANTING RELATED RELIEF**

IMV Inc., in its capacity as the authorized foreign representative (“IMV” or the “Foreign Representative”), as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”), the above-captioned debtors (collectively, the “Debtors”), each subject to proceedings (collectively, the “Canadian Proceeding”) pending before the Supreme Court of Nova Scotia (the “Canadian Court”) and initiated pursuant to the Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (the “CCAA”), hereby submits this verified petition (the “Verified Petition”, and together with the chapter 15 petitions filed for each of the Debtors as D.I. 1 in their respective cases, the “Petitions for Recognition”) and respectfully states as follows:

RELIEF REQUESTED

1. Through the Verified Petition, the Foreign Representative seeks the following relief:
 - (a) recognition pursuant to section 1517 of the Bankruptcy Code of the Canadian Proceeding as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code;

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers, are: IMV Inc. (6991); IMV USA Inc. (4184) (“IMV USA”); and Immunovaccine Technologies Inc. (6772) (“IVT”). The location of the Debtors’ headquarters and the Debtors’ foreign representative is: 130 Eileen Stubbs Avenue, Suite 19, Dartmouth, Nova Scotia B3B 2C4.

- (b) recognition on a final basis that the Foreign Representative is the “foreign representative” (as defined in section 101(24) of the Bankruptcy Code) of the Debtors;
- (c) full force and effect given in the United States to the Amended and Restated Initial Order (defined below), including any and all extensions or amendments thereof authorized by the Canadian Court, and extension of the protections of the Amended and Restated Initial Order to the Debtors in the United States on a final basis;
- (d) all relief automatically available pursuant to section 1520 of the Bankruptcy Code, including, but not limited to the “automatic stay” under section 362 of the Bankruptcy Code, which shall apply with respect to the Debtors and the Debtors’ property that is now or in the future located within the territorial jurisdiction of the United States;
- (e) additional relief pursuant to section 1521 of the Bankruptcy Code, including but not limited to, extension on a final basis, pursuant to section 1521(a)(6), of any relief granted under the Provisional Relief Order (defined below); and
- (f) such other and further relief as is appropriate under the circumstances, including pursuant to sections 105(a) and 1507 of the Bankruptcy Code.

2. To the extent the relief requested herein exceeds the relief available to the Foreign Representative with respect to the Debtors pursuant to section 1520 of the Bankruptcy Code, the Foreign Representative requests this relief pursuant to sections 1507 and 1521(a)(1) and (2).

3. In the event the Court were to determine the Canadian Proceeding is not a foreign main proceeding, the Foreign Representative requests that the Court nevertheless grant the relief requested above pursuant to sections 1521 and 1507 of the Bankruptcy Code.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters pursuant to 28 U.S.C. § 157(b)(2)(P).

5. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9013-1(f) of the Local Rules of the Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with the Petitions for Recognition to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. These chapter 15 cases have been properly commenced pursuant to sections 1504 and 1509 of the Bankruptcy Code by filing the Petitions for Recognition under section 1515 of the Bankruptcy Code.

7. Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

8. The bases for the relief requested in this Verified Petition are sections 105(a) 1501, 1504, 1507, 1515, 1517, 1520, and 1521 of the Bankruptcy Code.

BACKGROUND

9. On April 28, 2023, the Debtors commenced the Canadian Proceeding under the CCAA to initiate restructuring proceedings under the supervision of the Canadian Court. On May 1, 2023 the Canadian Court entered an initial order (the “Initial Order”) appointing FTI Consulting Canada Inc. (the “Monitor”) as monitor of the Debtors and authorizing IMV to act as Foreign Representative of the Debtors.

10. On May 5, 2023, following a Comeback Hearing in the Canadian Proceeding, the Canadian Court entered an amended and restated Initial Order (the “Amended and Restated Initial Order”). A description of the relief providing in the Amended and Restated Initial Order is set forth below and in Hall Declaration (defined below), and a certified copy of the Amended and

Restated Initial Order is attached to each of the Debtors' chapter 15 petitions and as Exhibit 1 to the Provisional Relief Order (defined below). At the Comeback Hearing, the Canadian Court also approved a claims process in the Canadian Proceeding, and the Debtors expect that the Canadian Court will enter an order establishing the claims process on May 8, 2023.

11. On the date hereof (the "Petition Date"), the Foreign Representative filed petitions under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceeding, thereby commencing the Debtors' chapter 15 cases.

12. Also on the Petition Date and concurrently herewith, the Foreign Representative filed the *Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* (the "Provisional Relief Motion") seeking entry of an order (the "Provisional Relief Order") granting the relief requested in the Provisional Relief Motion shortly after the commencement of these chapter 15 cases.

13. Additional information about the Debtors' business and operations and the events lead up to the filing of the Petitions for Recognition and the facts and circumstances surrounding the Canadian Proceeding and these chapter 15 cases are set forth in the *Declaration of Andrew Hall in Support of the Debtors' Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Amended and Restated Initial Order, and (IV) Related Relief* (the "Hall Declaration"). Details regarding the Canadian Proceeding are set forth in the *Declaration of Alain N. Tardif in Support of the Debtors' Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Amended and Restated Initial Order, and (IV) Related Relief* (the "Tardif Declaration"). The Hall Declaration and the Tardif Declaration are each incorporated herein by reference.

BASIS FOR RELIEF

14. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, to protect and maximize the value of a debtor's assets, and to facilitate the rehabilitation and reorganization or liquidation of businesses. The relief afforded to a foreign debtor under chapter 15 is intended to avoid disruptions that could otherwise derail a debtor's restructuring or liquidation in its home country.

15. Consistent with these principles, the Foreign Representative commenced ancillary proceedings for the Debtors under chapter 15 of the Bankruptcy Code to obtain recognition of the Canadian Proceeding and certain related relief in the United States. As set forth in detail in the Hall Declaration, the Foreign Representative believes that this chapter 15 case will complement the Debtors' primary proceeding in Canada to ensure the effective and economic administration of the Debtors' efforts to conduct a sale or restructuring process under the CCAA (or, alternatively, to wind down operations in a manner that maximizes value for stakeholders) and to prevent parties from taking action in the United States that may jeopardize these efforts.

I. The Debtors are Eligible for Chapter 15 Relief

16. Each of the Debtors is eligible to be a debtor in a chapter 15 case. For the purposes of chapter 15 of the Bankruptcy Code, a "debtor" means an entity that is the subject of a foreign proceeding. *See* 11 U.S.C. § 1502(1); *see also* 11 U.S.C. § 101(15), (41) (defining "entity" and "person"). The Foreign Representative and IVT are entities organized under the laws of Canada and IMV USA is a Delaware corporation. As set forth below, the Canadian Proceeding is a foreign proceeding as that term is defined in the Bankruptcy Code. None of the Debtors fall within any of the categories of entities excluded from chapter 15 eligibility, as set forth in section 1501(c) of the Bankruptcy Code.

17. Moreover, the Debtors each satisfy section 109(a) of the Bankruptcy Code which requires that a debtor have a residence, domicile, a place of business or property in the United States. 11 U.S.C. § 109(a). Courts have adopted a broad interpretation of “property” under section 109(a) of the Bankruptcy Code and have found that even a nominal amount of property in the United States satisfies the requirements of section 109(a). *See, e.g., In re Global Ocean Carriers Ltd.*, 251 B.R. 31 (Bankr. D. Del. 2000) (holding that approximately \$10,000 in a bank account and the unearned portions of retainers provided to local counsel constituted a sufficient property interest for chapter 15 purposes). Effectively, if a debtor has any property in the United States, section 109(a) of the Bankruptcy Code is satisfied.

18. Here, the Foreign Representative satisfies section 109(a) through its ownership of the stock of IMV USA, a Delaware corporation. Under Delaware law, the situs of the stock of a Delaware corporation is in Delaware. *See* 8 Del. C. § 169 (“For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State.”); *see also In re Global Ocean Carriers*, 251 B.R. at 38 (concluding that under Delaware law, a chapter 11 debtor that owned the capital stock of a Delaware corporation owned property in Delaware). IMV USA satisfies section 109(a) because it is a Delaware corporation and, thus, is domiciled in Delaware. Finally, IVT and IMV USA each satisfy section 109(a) through their respective interests in the unused portion of a retainer provided to the Debtors’ U.S. counsel, Troutman Pepper Hamilton Sanders, LLP in the amount of approximately \$50,000, which is being held in the firm’s bank account at WSFS Bank in Wilmington, Delaware. *See id.* (recognizing an interest in a retainer as property that satisfies section 109(a)).

19. Accordingly, the Debtors are eligible for relief under chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(b), (c).

II. The Canadian Proceeding Should Be Recognized as a Foreign Main Proceeding

20. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter an order recognizing a foreign proceeding as a foreign main proceeding if: (a) such foreign proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code, (b) the foreign representative applying for recognition is a person or body, and (c) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517(a). The Canadian Proceeding, the Foreign Representative, and the Petitions for Recognition satisfy all of the foregoing requirements.

A. The Canadian Proceeding is a “Foreign Proceeding.”

21. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

22. Courts have held that a “foreign proceeding” is: (a) proceeding; (b) that has either a judicial or an administrative character; (c) that is collective in nature, in the sense that the proceeding considers the rights and obligations of all creditors; (d) that is located in a foreign country; (e) that is authorized or conducted under a law related to insolvency or the adjustment of debt, even if the debtor that has commenced such proceedings is not actually insolvent; (f) in which the debtor’s assets and affairs are subject to the control or supervision of a foreign court or other authority competent to control or supervise a foreign proceeding; and (g) which proceeding is for the purpose of reorganization or liquidation. *See In re Ashapura Minechem Ltd.*, 480 B.R. 129, 136 (S.D.N.Y. 2012); *see also In re Overnight and Control Comm’n of Avánzit, S.A.*, 385 B.R.

525, 533 (Bankr. S.D.N.Y. 2008) (discussing factors). As set forth herein and in the Tardif Declaration, the Canadian Proceeding satisfies such requirements and, therefore, qualifies as a “foreign proceeding” for purposes of section 101(23) of the Bankruptcy Code.

23. **First**, the Canadian Proceeding is a proceeding commenced pursuant to the CCAA, a Canadian law that governs corporate reorganizations and provides for an arrangement of a company’s financial obligations. See CCAA § 44(a-e). For purposes of chapter 15 recognition, “the hallmark of a ‘proceeding’ is a statutory framework that constrains a company’s actions and that regulates the final distribution of a company’s assets.” *In re Betcorp Ltd.*, 400 B.R. 266, 278 (Bankr. D. Nev. 2009). Because the Canadian Proceeding operates under such statutory framework, it satisfies the first factor of section 101(23) of the Bankruptcy Code.

24. **Second**, the Canadian Proceeding is judicial in character. A reorganization proceeding is judicial in character whenever a “court exercises its supervisory powers.” *In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010). Here, in the Amended and Restated Initial Order, the Canadian Court has approved a sale and investment solicitation process (the “SISP”). After completion of the processes contemplated by the SISP and proper notice and hearing, the Canadian Court may ultimately approve a sale of the Debtors’ assets under the terms of the SISP, having considered the statutory requirements under the CCAA.

25. **Third**, the Canadian Proceeding is collective in nature in that all affected creditors are allowed to participate. See *In re Poymanov*, 571 B.R. 24, 33 (Bankr. S.D.N.Y. 2017) (“A proceeding is collective if it considers the rights and obligations of all of a debtor’s creditors, rather than a single creditor.”). The Canadian Proceeding is intended to affect creditors collectively, rather than to benefit any single creditor alone. Here, the Debtors have commenced the Canadian Proceeding with the goal of maximizing value for its creditors through the SISP. To the extent no

transaction results from the SISP, the Debtors intend to wind down operations, again with a goal of maximizing value for all creditors. Affected creditors are entitled to intervene while the SISP is implemented and the Canadian Court considers the sale of the Debtors' assets, and are likewise entitled to participate in the Canadian Proceeding if liquidation ultimately occurs. Further, at the Comeback Hearing, the Canadian Court has approved a claims process, through which the Debtors' creditors can assert their claims against the Debtors and have such claims administered through the Canadian Proceeding—the Debtors expect that an order approving the claims process will be entered by the Canadian Court on May 8, 2023. Thus, the Canadian Proceeding is a quintessential collective proceeding.

26. **Fourth**, the Canadian Proceeding is conducted in a foreign country, Canada, and the Canadian Court that will oversee the case is located in Nova Scotia, Canada.

27. **Fifth**, as described above, the CCAA is “a law relating to insolvency or adjustment of debt.” Here there is no doubt that the Canadian Proceeding conducted under CCAA is a proceeding under either (a) “a law relating to insolvency” or (b) “a law relating to . . . adjustment of debt.” Indeed, as noted above, the Debtors intend to pursue a sale or restructuring process under the CCAA, which will reorganize the Debtors' indebtedness.

28. **Sixth**, the Canadian Proceeding subjects the Debtors' assets and affairs to the supervision of the Canadian Court during the pendency of the proceedings.

29. **Finally**, the objective of the Canadian Proceeding is to effectuate a transaction further to the SISP. The transaction in respect of the Debtors further to the SISP, if any, and overseen by the Canadian Court pursuant to the CCAA may provide for a plan of compromise or arrangement or a transaction that will allow its creditors to maximize recovery and a return in a restructured and financially healthy entity. To the extent that a transaction does not occur as a

result of the SISP, the Debtors will seek an orderly winddown and liquidation of their business, with the goal of maximizing creditor recoveries.

30. Because the Canadian Proceeding satisfies all of the criteria required by section 101(23) of the Bankruptcy Code, it is a foreign proceeding entitled to recognition under chapter 15 of the Bankruptcy Code. U.S. courts have recognized collective proceedings similar to the Canadian Proceeding as “foreign proceedings” on numerous occasions. See, e.g., *In re Acerus Pharma. Corp.* Case No. 23-10111 (TMH) (Bankr. D. Del. Feb. 27, 2023) (recognizing a Canadian proceeding under the CCAA as a foreign proceeding); *In re CDS U.S. Holdings, Inc.*, Case No 20-11719 (CSS) (Bankr D. Del. Aug. 11, 2020); *In re Essar Steel Algoma*, No. Case 14-11730 (KJC) (Bankr. D. Del. Jul. 21, 2014) (same); *In re Mega Brands Inc.*, Case No. 10-10485 (CSS) (Bankr. D. Del. Mar. 23, 2010) (same).

B. The Canadian Proceeding Should be Recognized as a “Foreign Main Proceeding.”

31. The Canadian Proceeding should be recognized as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code. A foreign proceeding must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of its main interests. 11 U.S.C. § 1517(b). The term “center of main interests” (“COMI”) is not defined in the Bankruptcy Code. COMI, however, has been equated to a debtor’s principal place of business. See *Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 138 n.10 (2d Cir. 2013) (considering an entity’s principal place of business in making a COMI determination); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008). Courts have identified certain factors that are relevant in determining a debtor’s COMI, including: (a) the location of the debtor’s headquarters; (b) the location of those persons or entities that actually manage the debtor (which,

in certain instances, could be the headquarters of a holding company); (c) the location of the debtor's primary assets; and (d) the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case. *See In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006). In the absence of evidence to the contrary, a debtor's registered office is presumed to be the debtor's COMI. *See* 11 U.S.C. § 1516(c).

32. Here, under all of the relevant criteria, Nova Scotia, Canada is the Debtors' COMI.

As set forth in the Hall Declaration:

- a. IMV is incorporated under the *Canada Business Corporation Act* and is headquartered and domiciled in Dartmouth, Nova Scotia;
- b. IVT is the Debtors' main operating entity and is incorporated under the *Companies Act* (Nova Scotia). IVT is the registered owner of the Debtors' intellectual property and trademarks and currently employs all of the Debtors' employees, except the employees located in the United States. Most of the Debtors' bank accounts are held by IVT. IVT is the lessor under the Debtors' leases for the Québec office and Nova Scotia headquarters and laboratories. IVT is also the owner of all laboratory equipment used in the Debtors' operations.
- c. the majority of the Debtors' assets are located in Canada;
- d. all of the Debtors' accounting, marketing, finance and administrative functions are located in Dartmouth, Nova Scotia;
- e. all of the Debtors' research and development and quality systems management are located in Dartmouth, Nova Scotia;
- f. most clinical trial oversight is located in Canada;
- g. the Debtors' the supply chain is managed from Dartmouth, Nova Scotia;
- h. more than 50% of the Debtors' management and almost all of the Debtors' employees are located in Canada;
- i. all of the Debtors' information technology functions are provided out of Dartmouth, Nova Scotia;
- j. the Debtors' treasury management functions, including management of accounts receivable and accounts payable, are in Dartmouth, Nova Scotia;

- k. IMV USA is IMV Inc.'s subsidiary in the United States and is incorporated under the laws of Delaware. IMV USA has no operations and is dependent on IMV and IVT for its financing and human resources functions. IMV USA's sole purpose is to facilitate compensation of employees located in the United States and as such, it employs the Debtors' three employees located in the United States (one in Florida, one in Massachusetts, and one in New Jersey), and retains one consultant based in the United States (although the Debtors intend to end this engagement during the pendency of the Canadian Proceedings), the costs of all which are borne by IMV Inc. and IVT; and
- l. given its limited purpose, the management of IMV USA is primarily handled by IMV finance and human resources executives located in Canada, and its books and records are maintained in Canada. IMV USA is also the lessee under a lease for 3,400 s.f. of furnished office space in Cambridge, Massachusetts, which IMV USA recently vacated. The Debtors intend to disclaim in the Canadian Proceeding.

See Hall Declaration at ¶ 103

33. Further, the Canadian Court ruled that Nova Scotia, Canada is the Debtors' center of main interest in the Amended and Restated Initial Order. *See* Amended and Restated Initial Order at ¶ 62

34. Based on these facts, the Debtors have substantially more ties to Canada than to any other country. Therefore, the Debtors' COMI is Canada and, as such, the Canadian Proceeding should be recognized as a foreign main proceeding.

III. These Cases Were Commenced by the a Duly Authorized Foreign Representative

35. Section 1517 of the Bankruptcy Code provides that a "foreign representative" shall apply for recognition of the foreign proceeding. Section 101(24) of the Bankruptcy Code. That section provides as follows:

The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

36. Pursuant to the Amended and Restated Initial Order, the Canadian Court authorized the appointment of IMV as the Foreign Representative, authorized and empowered the Foreign Representative to act as a foreign representative in respect of the Canadian Proceeding, and authorized the Foreign Representative to file the chapter 15 cases in the United States for the purpose of having the Canadian Proceeding recognized. *See* Amended and Restated Initial Order, ¶¶ 60-61

IV. The Petitions for Recognition Satisfy All of the Requirements under Section 1515 of the Bankruptcy Code.

37. These chapter 15 cases were duly and properly commenced by filing the Petitions for Recognition, accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules, including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which the Debtors are a party at the time of the commencement of the chapter 15 cases, and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (c) a statement identifying all of the Debtors' foreign proceedings that are known to the Foreign Representative; and (d) a certified copy of both the Initial Order and the Amended and Restated Initial Order.

V. Recognition of the Canadian Proceeding is Not Manifestly Contrary to U.S. Public Policy.

38. Section 1506 of the Bankruptcy Code provides that nothing in chapter 15 requires this Court to take any action that would be manifestly contrary to the public policy of the United States. 11 U.S.C. § 1506. “[F]ederal courts in the United States have uniformly adopted the narrow application of the public policy exception.” *In re OAS S.A.*, 533 B.R. at 103 (citing *Fairfield Sentry*, 714 F.3d at 139). The relief requested by the Foreign Representative is not manifestly contrary to,

but rather consistent with, United States public policy. *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (recognizing that a Canadian liquidation proceeding would not violate the laws or public policy of New York or the United States). As noted above, many U.S. courts, including in this District, have granted recognition of proceedings under the CCAA.

39. One of the fundamental goals of the Bankruptcy Code is the centralization of administration of a company's affairs and allowing for a uniform distribution of that company's assets. *See, e.g., In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990). The Canadian Proceeding provides for such a uniform distribution scheme. The relief sought from this Court is nothing more than implementation of those distributions in the United States.

VI. The Discretionary Relief Requested is Necessary and Appropriate to Ensure the Orderly Administration of the Canadian Proceeding.

40. The recognition of a foreign proceeding as a foreign main proceeding results in automatic application (pursuant to section 1520(a) of the Bankruptcy Code) of certain Bankruptcy Code provisions to a debtor and its property within the territorial jurisdiction of the United States. Further discretionary relief available under section 1521(a) of the Bankruptcy Code in foreign main proceedings is available upon the determination of a bankruptcy court that such relief is necessary to effectuate the purpose of chapter 15 and to protect the debtor's assets or the interests of creditors, and may include:

- a. staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a) of the Bankruptcy Code;

- b. staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a) of the Bankruptcy Code;
- c. suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a) of the Bankruptcy Code;
- d. entrusting the administration or realization of all or part of a debtor's assets in the United States to the foreign representative; and
- e. extending any relief granted under section 1519(a) of the Bankruptcy Code.

41. In addition to section 1521 of the Bankruptcy Code, section 1507 of the Bankruptcy Code provides that upon recognition of a foreign proceeding as a foreign main proceeding, a bankruptcy court "may provide additional assistance to a foreign representative under this title or under other laws of the United States", and section 105(a) of the Bankruptcy Code provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

42. When considering whether to entrust the distribution of all or part of a debtor's assets to a foreign representative, a bankruptcy court must determine that the interests of creditors in the United States are sufficiently protected. 11 U.S.C. § 1521(b)

43. In connection with recognition of the Canadian Proceeding, the Foreign Representative respectfully requests that the Court: (i) pursuant to section 1521(a)(6) of the Bankruptcy Code, extend on a final basis of all the provisional relief granted in the Provisional Relief Order, including the relief granted in the Provisional Relief Order in respect of sections 361, 362, and 365(e) of the Bankruptcy Code; (ii) entrust the administration, realization, and distribution of all of the Debtors' assets in the United States to the Foreign Representative pursuant

to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code; and (iii) grant, pursuant to section 1521(a)(7) of the Bankruptcy Code, any Provisional Relief (as defined in the Provisional Relief Motion) not granted pursuant to the Provisional Relief Order and any relief included in the Amended and Restated Initial Order that is not granted in the Provisional Relief Order. The Foreign Representative respectfully submits that such relief is warranted under sections 105(a), 1507 and 1521 of the Bankruptcy Code and the general principles of comity that underpin chapter 15.

44. The granting of such relief is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code, and is necessary to effectuate the Canadian Proceeding. If granted, such relief would promote all of the legislatively enumerated objectives of section 1501(a) of the Bankruptcy Code

45. Indeed, the Amended and Restated Initial Order expressly authorizes the Foreign Representative to apply for foreign recognition and approval of the Canadian Proceeding in the United States pursuant to chapter 15 of the Bankruptcy Code and requests the aid and recognition of courts in the United States to give effect to the Amended and Restated Initial Order and assist the Foreign Representative in carrying out the terms of the Amended and Restated Initial Order. *See* Amended and Restated Initial Order ¶¶ 60-61. Thus, in addition to the reasons set forth above, this Court should give full force and effect in the United States to the Amended and Restated Initial Order under well-established principles of international comity and specifically pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code.

46. Fair and efficient administration of the Canadian Proceeding that protects all parties in interest requires that all creditors be bound by the terms of the Canadian Proceeding and restructuring transactions as sanctioned by the Canadian Court. *See In re Energy Coal S.P.A.*, 582

B.R. 619, 626–27 (Bankr. D. Del. 2018) (acknowledging the broad principles of comity applied by United States courts in both recognition of foreign bankruptcies and post- recognition relief granted to foreign representatives).

47. If the Debtors are able to stay actions against their property and businesses only in Canada, there is a risk that certain of the Debtors’ contractual counterparties or other parties in interest could pursue action in the United States against the Debtors or other parties (such as the Debtors’ directors and officers) protected by the Amended and Restated Initial Order. If such parties can effectively evade the terms of the Amended and Restated Initial Order, and attempt to derail the SISP or the CCAA restructuring process by commencing actions in the United States, the Debtors and others involved would be required to defend any such proceedings and deplete the resources of the restructured business and prejudice its reorganized value. Therefore, relief requested by the Debtors is required to prevent individual creditors acting to frustrate the purposes of the restructuring process in disregard of the Amended and Restated Initial Order, the foremost of which is the fair and efficient administration of the Canadian Proceeding to maximize value for all creditors.

48. Accordingly, the relief requested herein would further the objectives of chapter 15 by assisting the implementation and administration of the Canadian Proceeding.

NOTICE

49. The Foreign Representative will provide notice of the Petitions for Recognition in accordance with procedures set forth in the *Motion for Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice*, filed contemporaneously herewith. In light of the nature of the relief requested, the Foreign Representative requests that the Court find no further notice is required.

CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court: (a) grant the relief requested in the Verified Petition and enter an order in the form attached hereto as **Exhibit A** and; (b) grant such other and further relief and additional assistance as this Court may deem just and proper.

Dated: May 8, 2023
Wilmington, Delaware

Respectfully Submitted,

/s/ David M. Fournier

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Counsel to the Foreign Representative

VERIFICATION OF PETITION


I, Andrew Hall, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:

I am the Chief Executive Officer of IMV Inc., the authorized foreign representative for the Debtors. As such, I have full authority to verify the foregoing Verified Petition on behalf of the Debtors.

I have read the foregoing Verified Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 8, 2023
Dartmouth, Nova Scotia



Andrew Hall
CEO of IMV Inc.

Exhibit A
Proposed Order

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

IMV Inc., *et al.*,

Debtors in a Foreign Proceeding.¹

Chapter 15

Case No. 23-10589 (KBO)

(Jointly Administered)

Re: D.I. ____

**ORDER (I) RECOGNIZING FOREIGN MAIN PROCEEDING, (II) RECOGNIZING
FOREIGN REPRESENTATIVE, (III) RECOGNIZING AMENDED AND RESTATED
INITIAL ORDER, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the *Verified Petition for (I) Recognition of Foreign Main Proceeding (II) Recognition of Foreign Representative, (III) Recognition Amended and Restated Initial Order, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Verified Petition”, and together with the chapter 15 petitions filed for each of the Debtors as D.I. 1 in their respective cases, the “Petitions for Recognition”)², the Hall Declaration, the Tardif Declaration, and the Provisional Relief Motion (collectively, the “Chapter 15 Pleadings”), each filed May 1, 2023, by or on behalf of the Foreign Representative, IMV Inc., in its capacity as the duly appointed foreign representative of the above captioned debtors (the “Debtors”), in a voluntary restructuring proceeding (the “Canadian Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”), pending before the Supreme Court of Nova Scotia (the “Canadian Court”), initiated pursuant to the Companies’ Creditors Arrangement Act,

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers, are: IMV Inc. (6991); IMV USA Inc. (4184) (“IMV USA”); and Immunovaccine Technologies Inc. (6772) (“IVT”). The location of the Debtors’ headquarters and the Debtors’ foreign representative is: 130 Eileen Stubbs Avenue, Suite 19, Dartmouth, Nova Scotia B3B 2C4.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Verified Petition.

R.S.C. 1985, c. C-36 (as amended, the “CCAA”), and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that venue is proper before this Court pursuant to 28 U.S.C. § 1410; and the Court having considered and reviewed the Chapter 15 Pleadings and having held a hearing to consider the relief requested in the Petitions for Recognition (the “Hearing”); and it appearing that timely notice of the filing of the Chapter 15 Pleadings and the Hearing has been given pursuant to the *Order (A) Scheduling Recognition Hearing and (B) Specifying Form and Manner of Service of Notice* and that no other or further notice need be provided; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. These cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

C. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

D. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

E. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

F. The Canadian Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceeding is pending in Canada, which is the country in which the Debtors have their center of main interests and, as such, the Canadian Proceeding is a “foreign main proceeding” within the meaning of sections to section 1502(4) an 1517(b)(1) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding in respect of each of the Debtors.

H. The Foreign Representative IMV Inc. is a “person,” as such term is defined in section 101(41) of the Bankruptcy Code, has been duly appointed by the Debtors and has been declared by the Canadian Court as authorized to act as the “foreign representative” with respect to the Canadian Proceeding within the meaning of section 101(24) of the Bankruptcy Code.

I. The Petitions for Recognition meet all of the requirements set forth in section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002(q).

J. The Canadian Proceeding is entitled to recognition by the Court pursuant to section 1517(a) of the Bankruptcy Code and the Debtors have satisfied the eligibility requirements of section 109(a) of the Bankruptcy Code, as applicable.

K. The Debtors and the Foreign Representative are entitled to all of the relief set forth in section 1520 of the Bankruptcy Code.

L. Appropriate notice of the filing of, and the Hearing on, the Petitions for Recognition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

M. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted

pursuant to sections 105(a), 362, 365, 1507(a), 1509(b)(2)-(3), 1520, 1521, 1522 and 1525 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors or other parties in interests that is not outweighed by the benefits of granting that relief.

N. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of their creditors and other parties in interest.

O. Absent the relief granted hereby, the Debtors and their directors and officers may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with the Canadian Proceeding or otherwise against the Debtors and their directors and officers or their property, thereby interfering with and causing harm to, the Debtors, their creditors, and other parties in interest in the Canadian Proceeding and, as a result, the Debtors, their creditors and such other parties in interest would suffer irreparable injury for which there is no adequate remedy at law.

P. Absent the requested relief, the efforts of the Debtors, the Canadian Court and the Foreign Representative in conducting the Canadian Proceeding and effecting their restructuring or sale process therein may be thwarted by the actions of certain creditors, a result that will obstruct the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.

Q. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the Debtors' restructuring in the Canadian Proceeding, (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, and (v) is important to the overall objectives of the Debtor' restructuring.

R. The findings and determinations set forth in that certain Order Granting Provisional Relief [D.I. ___] (the "Provisional Relief Order") are confirmed on a final basis and incorporated by reference.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petitions for Recognition and the relief requested therein are granted as set forth herein.
2. The Petitions for Recognition meet the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).
3. The Canadian Proceeding is granted recognition with respect to each of the Debtors as a foreign main proceeding (as defined in section 1502(4) of the Bankruptcy Code) pursuant to sections 1517(a) and (b)(1) of the Bankruptcy Code.
4. IMV Inc. is recognized as the “foreign representative” as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceeding.
5. The Debtors and the Foreign Representative are granted all of the relief set forth in section 1520 of the Bankruptcy Code including, without limitation, the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtors and to the Debtors’ property that is now within or in the future is located within the territorial jurisdiction of the United States.
6. The Amended and Restated Initial Order, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors’ property that now or in the future is located within the territorial jurisdiction of the United States.
7. All objections, if any, to the Petitions for Recognition or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled with prejudice on the merits.

8. Upon entry of this Order, the Canadian Proceeding is shall be and hereby is granted comity and given full force and effect in the United States and, pursuant to section 1520 of the Bankruptcy Code, among other things:

- (a) the protections of section 361, 362, and 365(e) of the Bankruptcy Code apply to the Debtors;
- (b) all persons and entities are enjoined from taking any actions inconsistent with the Canadian Proceeding and the SISP and seizing, attaching, and enforcing or executing liens or judgments against the Debtors' property in the United States or from transferring, encumbering, or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States without the express consent of the Foreign Representative; and
- (c) all persons and entities are enjoined from commencing or continuing, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative or other judgment, assessment, order, lien or arbitration award against the Debtors or their assets or proceeds thereof;
- (d) all persons and entities are enjoined from commencing any suit, action, or proceeding against the Debtors, the Foreign Representative, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with these chapter 15 cases, the Canadian Proceeding, and the SISP; and
- (e) all persons and entities are enjoined from terminating or modifying an executory contract or unexpired lease at any time after the commencement of these chapter 15 cases solely because of a provision in such contract or lease is conditioned upon the commencement of the Canadian Proceeding or a case under the Bankruptcy Code

9. The Foreign Representative and the Debtors shall be entitled to the full protections and rights enumerated under sections 1521(a)(4) and (5) and 1521(b) of the Bankruptcy Code and, accordingly, the Foreign Representative:

- (a) is entrusted with the administration or realization of all or part of the Debtors' assets located in the United States and the Foreign Representative

is hereby established as the exclusive representative of the Debtors in the United States; and

- (b) has the right and power to examine witnesses, take evidence, or deliver information concerning the Debtors' assets, affairs, rights, obligations, or liabilities.

10. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended, and the Provisional Relief Order shall remain in full force and effect. To the extent there is any inconsistency between this Order and the Provisional Relief Order, the language in this Order shall control.

11. Any and all Provisional Relief (as defined in the Provisional Relief Motion) not granted in the Provisional Relief Order, if any, is hereby granted pursuant to section 1521(a)(7) of the Bankruptcy Code.

12. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and his representatives and agents, are hereby enjoined (to the extent they have not been stayed under section 1520(a)) from:

- (a) execution against any of the Debtors' and their directors and officers (the "Protected Parties") assets;
- (b) the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors and other Protected Parties, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding;
- (c) taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or other Protected Parties or any of their property or proceeds thereof;
- (d) transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;

- (e) commencing or continuing an individual action or proceeding concerning the Debtors' or other Protected Parties' assets, rights, obligations or liabilities; and
- (f) declaring or considering the filing of the Canadian Proceeding or these chapter 15 cases a default or event of default under any agreement, contract or arrangement

13. Any parties who believe they have a claim against any of the Debtors are obligated to file such claim in, and only in, the Canadian Proceeding.

14. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the Local Rules.

15. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceeding, this Order, these chapter 15 cases, or any adversary proceeding herein, or contested matters in connection therewith, or any further proceeding commenced hereunder shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

16. The relief granted hereby is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with any public policy of the United States, warranted pursuant to sections 1507(a), 1509(b)(2)-(3), 1520, 1521(a), and 1522 of the Bankruptcy Code, and will not cause hardship to creditors of the Debtors, or to any other parties in interest, in each case that is not outweighed by the benefits of granting such relief.

17. The Foreign Representative and the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

18. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

19. A copy of this Order shall be served within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order (A) Scheduling Hearing on Recognition of Chapter 15 Petitions and (B) Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

20. This Order applies to all parties in interest in these chapter 15 cases and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

21. This Court shall retain jurisdiction with respect to the enforcement, amendment, interpretation or modification of this Order, any requests for additional relief, any adversary proceeding in and through these chapter 15 cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced within the jurisdiction of this Court.