

**SUPREME COURT OF NOVA SCOTIA**

**IN THE MATTER OF:**      **Application by IMV Inc., Immunovaccine Technologies Inc. and IMV USA Inc. (the “Applicants”), for relief under the *Companies’ Creditors Arrangement Act***

**FACTUM OF THE APPLICANTS IN SUPPORT OF THE ISSUANCE OF AN EXTENSION ORDER**

To the Honourable Justice John P. Bodurtha, the Applicants respectfully submit:

**PART I – OVERVIEW**

1.      The Debtors / Applicants IMV Inc., Immunovaccine Technologies Inc. (“**IVT**”) and IMV USA Inc. (“**IMV USA**” and collectively with IMV Inc. and IVT, “**IMV**” or the “**Applicants**”) obtained relief under the *Companies’ Creditors Arrangement Act*<sup>1</sup> (the “**CCA**”) by an initial order dated May 1, 2023 (the “**Initial Order**”). The Initial Order, among other things, appointed FTI Canada Consulting Inc. as monitor of the Applicants in these proceedings (the “**Monitor**”) and provided an initial stay of proceeding until and including May 5, 2023 (the “**Stay Period**”). The Court granted an Amended and Restated Initial Order (the “**ARIO**”) on May 5, 2023, which, among other things, extended the Stay Period until and including July 17, 2023, and approved a sale and investment solicitation process (the “**SISP**”) to solicit offers for a broad range of executable transactions in respect of the business and/or assets of the Applicants.
  
2.      The Applicants now seek an order extending the Stay period until and including August 18, 2023, and approving the activities and fees of the Monitor and its counsel.

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<sup>1</sup> RSC 1985, c C-36, as amended.

3. The relief sought is within the Court's jurisdiction and discretion to grant under the CCAA and is consistent with the objectives of the CCAA. The Applicants have been proceeding in good faith and with due diligence to implement its restructuring plan for the benefit of all of their stakeholders. The proposed order has been developed in consultation with and is supported by the Monitor.
4. The extension of the Stay period sought by the Applicants will provide the additional breathing space required to move their restructuring forward, with a view to properly winding down their operations and negotiate and implement a transaction in the context of the SISP.
5. For the reasons set out below, the Applicants submit that the requested relief should be granted.

## **PART II – THE FACTS**

6. The facts are more fully set out in the Affidavit of Andrew Hall sworn May 3, 2023 (the "**July 13 Hall Affidavit**").<sup>2</sup> Capitalized terms used herein and not otherwise defined shall have the meanings associated to them in the July 13 Hall Affidavit, unless the context shall otherwise require. Dollar amounts are given in Canadian dollars unless otherwise specified.

## **PART III – ISSUES**

7. The issue before this Court, as addressed below, is whether the Court should grant the requested extension of the Stay Period until and including August 18, 2023.

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<sup>2</sup> Affidavit of Andrew Hall sworn July 13, 2023 [*July 23 Hall Affidavit*].

## PART IV – THE LAW

### A. The Court Should Extend the Stay Period Until August 18, 2023

8. On May 1<sup>st</sup>, 2023, the Court granted a Stay of proceedings in favour of IMV and its Directors and Officers until and including May 5, 2023, which was subsequently extended until and including July 17, 2023 as part of the ARIO. The Applicants now seek the extension of such Stay Period until and including August 18, 2023.
9. Subsection 11.02(2) of the CCAA sets out the criteria for extending a stay order, namely that it would be appropriate to do so and that the applicant or debtor company is acting, or has acted in good faith and with due diligence.<sup>3</sup>
10. It is appropriate to grant an extension where the debtor company has adopted measures to further the purpose of the CCAA, namely to restructure the debtor company for the benefit of its stakeholders. These measures can include the conduct of a SISP, where the SISP is the most efficient way to maximize the value for stakeholders.<sup>4</sup>
11. With respect to the good faith and due diligence requirements at section 11.02 (3), they refer to factors such as the “*observance of reasonable commercial standards of fair dealings in the proceedings, the absence of an intent to defraud and a duty of honesty to the court and to the stakeholders directly affected by the CCAA process.*”<sup>5</sup>
12. In the present case, since the issuance of the Initial Order, the Applicants have, amongst other activities:
  - (i) taken various measures to stabilize their affairs;<sup>6</sup>
  - (ii) obtained an order under Chapter 15 of the United States Bankruptcy Code for recognition of these CCAA proceedings as “Foreign Main Proceedings” on May 9, 2023;<sup>7</sup>

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<sup>3</sup> CCAA, s [11.02](#).

<sup>4</sup> *North American Tungsten Corporation Ltd (Re)*, [2015 BCSC 1376](#) at [paras 26-28](#) [Tab 1].

<sup>5</sup> *Ibid* at [para 29](#) [Tab 1].

<sup>6</sup> July 13 Hall Affidavit, *supra* note 2, at para 9.

<sup>7</sup> *Ibid* at para 10.

- (iii) continued to engage with a number of their stakeholders, namely their employees, the intermediaries involved directly with patients in clinical trials, the agent to their only secured creditors, Horizon Technology Finance Corporation (“**Horizon**”), their suppliers, etc.;<sup>8</sup>
  - (iv) assisted the Monitor with the implementation of the SISP;<sup>9</sup>
  - (v) disclaimed 16 unprofitable contracts and leases;<sup>10</sup> and
  - (vi) worked, in consultation with the Monitor, to review and update its cash flow projections for its receipts and disbursements for the period up to and including August 18, 2023.<sup>11</sup>
13. The extension of the Stay Period is necessary and appropriate in the circumstances in order to allow IMV to begin to implement the wind-down of part of its operations, including its clinical trials and complete the claims process – which *inter alia* provides a bar date of August 31, 2023, for the filing of claims against IMV’s directors and officers – while the Monitor, with the Applicants, continues to work towards negotiating with the bidders and Horizon to implement a transaction further to the conclusion of the SISP.<sup>12</sup>
14. IMV has sufficient funds to get through the Stay Period, including a provision for the payments under the KERP and the payments to the critical suppliers, if required.<sup>13</sup>
15. The Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order, and no one has suggested otherwise.<sup>14</sup>
16. In light of the foregoing, it is respectfully submitted that the applicable criteria are amply satisfied and that Stay Period should be extended until and including August 18, 2023.

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<sup>8</sup> *Ibid* at paras 12, 13.

<sup>9</sup> *Ibid* at paras 11, 17, 19, 22.

<sup>10</sup> *Ibid* at para 14.

<sup>11</sup> *Ibid* at para 15.

<sup>12</sup> July 13 Hall Affidavit, *supra* note 2, at paras 23, 25-32, 33; *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at [para 18](#) [Tab 2].

<sup>13</sup> July 13 Hall Affidavit, *supra* note 2, at para 34.

<sup>14</sup> *Ibid* at paras 35, 40.



**PART V – NATURE OF THE ORDER SOUGHT**

17. The Applicants therefore request an Extension Order substantially in the form of the draft Extension Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of July, 2023:**



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**SCHEDULE A**  
**INDEX OF AUTHORITIES**

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1.	<i>North American Tungsten Corporation Ltd (Re)</i> , <a href="#">2015 BCSC 1376</a>
2.	<i>Century Services Inc v Canada (Attorney General)</i> , <a href="#">2010 SCC 60</a>