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Hfx No. 523334

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 MONITOR
(CCAA Termination Order)
(Returnable November 29, 2023)**

November 28, 2023

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova (LSO# 52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Natasha Rambaran (LSO# 80200N)
Tel: (416) 869-5504
Email: nrambaran@stikeman.com

Lawyers for the Monitor,
FTI Consulting Canada Inc.

TO: THE SERVICE LIST

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PART I - OVERVIEW¹

1. FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”), in its capacity as the Monitor of the Applicants in these CCAA Proceedings, brings this motion for the CCAA Termination Order, which, among other things:

- (a) approves the Seventh Report, the activities of the Monitor, and certain incurred and remaining fees and disbursements of the Monitor and its counsel;
- (b) terminates the CCAA Proceedings upon the filing of the Monitor’s Termination Certificate;
- (c) terminates the Charges;
- (d) discharges FTI as Monitor of the Applicants at the CCAA Termination Time;
- (e) grants a release to the Monitor and its counsel;

¹ Capitalized terms used herein and not otherwise defined have the meanings given to them in the Seventh Report of the Monitor dated November 23, 2023 (the “**Seventh Report**”).

- (f) authorizes the Applicants and the Monitor to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and grants certain related relief;
- (g) authorizes, directs and empowers FTI to hold and distribute any assets of the Applicants including any future assets;
- (h) authorizes and directs the Monitor to transfer \$40,000 to the Trustee for the fees and disbursements of the Trustee and its counsel (plus applicable taxes); and
- (i) extends the Stay Period to the earlier of: (i) the CCAA Termination Time; and (ii) such other date as this Court may order.

2. For the reasons described herein, the Monitor respectfully submits that the relief sought in the CCAA Termination Order is fair and reasonable in the circumstance.

PART II - FACTS

3. The facts with respect to this motion are more fully set out in the Seventh Report. Unless otherwise stated, dollar amounts referred to herein are in Canadian dollars.

A. Background

4. On May 1, 2023, the IMV Group sought and obtained the Initial Order, which, among other things, appointed FTI as Monitor.²

5. On May 5, 2023, at the comeback hearing, the Court granted the Amended and Restated Initial Order, which, among other things, approved a SISP to solicit interest in potential transactions involving the business and/or assets of the IMV Group.³

6. On September 6, 2023, the Court granted an Approval and Vesting Order, which approved a sale transaction for among other things, IMV’s Intellectual Property relating to its vaccine

² Seventh Report at paras 1-2.

³ Seventh Report at para 3.

platform technology (the “**Horizon Transaction**”). On this same date, the Court granted the Interim Distribution and WEPPA Order.⁴

7. The Horizon Transaction closed on September 29, 2023.⁵

8. On September 27, 2023, the Court granted the September 27 Order, which, among other things, amended the Amended and Restated Initial Order to, among other things, expand the powers of the Monitor.⁶

9. On October 25, 2023, the Court granted the October 25 Order, which, among other things, extended the Stay Period until and including December 1, 2023, and approved the Sixth Report and the activities of the Monitor referred to therein.⁷

B. Activities of the Monitor

10. Since the Sixth Report, the Monitor has undertaken the following activities:

- (a) engaged with the Monitor’s legal counsel, Stikeman, regarding matters related to the CCAA Proceedings;
- (b) updated the current service list for the CCAA Proceedings on the Monitor’s Website;
- (c) continued to operate and monitor its telephone hotlines and email account for stakeholder inquiries;
- (d) assisted the IMV Group in discussions with suppliers, creditors and employees related to the CCAA Proceedings and responded to requests for information from certain of such parties;
- (e) reviewed disbursements of the IMV Group;

⁴ Seventh Report at paras 7-8.

⁵ Sixth Report of the Monitor dated October 20, 2023 (the “**Sixth Report**”) at paras 18-19.

⁶ Seventh Report at para 9.

⁷ Seventh Report at para 10.

- (f) continued to assist with the sale of the IMV Group's lab equipment and assignment of the related lease (the "**Equipment and Lease Transaction**");
- (g) continued to assist with activities of due diligence requests to facilitate the closing of the Equipment and Lease Transaction and any distributions;
- (h) discussed the winding-up of the Chapter 15 proceedings with US legal counsel;
- (i) assisted in the oversight of preparing certain tax returns which may lead to certain Tax Refunds; and
- (j) made distributions to Horizon.⁸

11. Stikeman has advised the Monitor and assisted with its involvement in the above activities in the CCAA Proceedings.⁹

C. Equipment and Lease Transaction

12. Since the Sixth Report, the Monitor has assisted the IMV Group in finalizing the Equipment and Lease Transaction for the sale of its lab equipment and assignment of the related lease, which closed on October 31, 2023.¹⁰

D. Wind-Down Activities and Remaining CCAA Tasks

13. The Monitor has been advised by the IMV Group that the clinical trials have now been terminated. There are no remaining active patients who can access a Special Access Program in their country nor are there active patients benefiting from treatment at this point.¹¹

14. As at the date of the Seventh Report, the two (2) remaining employees who were retained solely to assist with certain remaining wind-down activities, including the sale of the lab and any other remaining assets, have been terminated. One (1) former employee has since been engaged on a consulting basis following termination to assist the IMV Group and the Monitor with any remaining wind-down activities.¹²

⁸ Seventh Report at para 18.

⁹ Konyukhova Affidavit at para 10, Seventh Report at Appendix "B".

¹⁰ Seventh Report at paras 19-20.

¹¹ Seventh Report at para 26.

¹² Seventh Report at para 27.

15. The Monitor has largely completed its duties as set out in the Amended and Restated Initial Order and the subsequent orders, and the administration of the CCAA Proceedings are substantially complete, except for the following Remaining CCAA Tasks which the Monitor expects will need to be completed prior to filing the Monitor's Termination Certificate:

- (a) filing the outstanding United States and Canadian tax returns;
- (b) discharging IMV from the Chapter 15 proceedings and winding down IMV USA;
- (c) completing any other ancillary matters not listed above that may be required to complete the administration of the CCAA Proceedings; and
- (d) assigning or causing the assignment of the IMV Group into bankruptcy.¹³

E. Proposed Termination of the CCAA Proceedings

16. Subject to the Court's approval, upon completing the administration of these CCAA Proceedings, the Monitor intends to serve upon the service list the Monitor's Termination Certificate certifying that all Remaining CCAA Tasks have been completed.¹⁴

17. The proposed CCAA Termination Order provides that, upon serving the Monitor's Termination Certificate on the service list, the CCAA Termination Time will occur.¹⁵

18. Upon service of the Monitor's Termination Certificate, FTI will be discharged from its duties as Monitor, but will continue to have the benefit of any of the rights, approvals, releases and protections in favour of the Monitor under the CCAA Order and at law following the CCAA Termination Time, including in connection with any other actions taken by FTI following the CCAA Termination Time with respect to the IMV Group or these CCAA Proceedings.¹⁶

19. Notwithstanding its discharge as Monitor, FTI shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these

¹³ Seventh Report at para 28.

¹⁴ Seventh Report at para 32.

¹⁵ Seventh Report at para 33.

¹⁶ Seventh Report at para 34.

CCAA Proceedings after the CCAA Termination Time as may be required, including, but not limited to, matters related to the bankruptcy of the IMV Group.¹⁷

20. The proposed CCAA Termination Order authorizes the Applicants or the Monitor to make an assignment into bankruptcy pursuant to the BIA before the CCAA Termination Time and authorizes the Monitor to execute and file any assignment in bankruptcy and related documents on behalf of the Applicants.¹⁸

21. The proposed CCAA Termination Order authorizes, but does not obligate, the Monitor to act as trustee in bankruptcy (the “**Trustee**”) for each of the Applicants. Pursuant to the proposed CCAA Termination Order, the Trustee is authorized to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA, including, without limitation:

- (a) administering the bankruptcy estates of IMV Inc., Immunovaccine Technologies Inc. and IMV USA Inc. under a single court file number and title of proceeding;
- (b) sending a notice of the first meeting of creditors (the “**Notice**”) in the manner prescribed by section 102 of the BIA by sending a consolidated Notice for all of the Applicants to accompany the Notice set out in subsection 102(2) of the BIA;
- (c) convening meetings of creditors and inspectors in the bankrupt estates of the Applicants through one combined advertisement and conducting such meetings jointly provided that the results of any creditors’ vote shall be separately tabulated for each such bankrupt estate;
- (d) using a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
- (e) maintaining a consolidated bank account with respect to the Applicants’ respective bankruptcy estates;
- (f) issuing consolidated reports in respect of the bankruptcy estates of the Applicants;

¹⁷ Seventh Report at para 35.

¹⁸ Seventh Report at para 36.

- (g) performing a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Applicants required under the BIA; and
- (h) appointing a single group of inspectors to be the inspectors for the consolidated bankruptcy estates of the Applicants.¹⁹

22. The CCAA Termination Order provides that the above-described procedural consolidation is not a substantive consolidation of the bankrupt estates of the Applicants and will automatically terminate if the Trustee is replaced as licensed insolvency trustee of any, but not all, of the estates of the Applicants.²⁰

23. Pursuant to the proposed CCAA Termination Order, the Monitor is authorized and directed to transfer \$40,000 to the Trustee for the fees and disbursements of the Trustee and its counsel (plus applicable taxes). The CCAA Termination Order also authorizes and direct the Trustee to pay any available remainder from such retainer to Horizon on completion of the Applicants' BIA proceedings.²¹

24. The proposed CCAA Termination Order also provides that the assets of the Applicants including any future assets, which includes, without limitation, any Tax Refunds, will not vest in the Trustee and can be distributed by the Monitor to Horizon as the senior secured lender with a large deficiency remaining as at the date of this report. The only asset of substance remaining or to come into the estates of the Applicants is the potential Tax Refund.²²

25. The Monitor is not aware of any outstanding amounts owing in relation to the Charges (as defined in the Amended and Restated Initial Order) other than professional fees (which will be otherwise provided for), and therefore the CCAA Termination Order seeks to discharge each of the Charges upon the filing of the Monitor's Termination Certificate.²³

F. Fees and Activities of the Monitor and its Counsel

26. The Monitor and its legal counsel, Stikeman, have been paid their fees and disbursements at their standard rates and charges by the Applicants from time to time, in accordance with

¹⁹ Seventh Report at para 37.

²⁰ Seventh Report at para 38.

²¹ Seventh Report at para 39.

²² Seventh Report at para 40.

²³ Seventh Report at para 41.

paragraph 32 of the Amended and Restated Initial Order, as part of the costs of the CCAA Proceedings.²⁴

27. The fees of the Monitor for the period of September 18, 2023 to November 19, 2023 total \$185,120.00, disbursements in the amount of \$5,825.24, Harmonized Sales Tax (“HST”) in the amount of \$28,649.71 for a grand total of \$219,587.03.²⁵

28. The fees of the Monitor’s counsel from September 15, 2023 to November 16, 2023 are \$61,467.25 and HST in the amount of \$8,334.65, and disbursements of \$2,645.24, with the total fees and disbursements of the Monitor’s counsel including HST during this period of \$72,447.14.²⁶

29. In addition to the fees and disbursements described above, the Monitor and Stikeman estimate that they will collectively incur the Remaining Fees and Disbursements in the amount of \$50,000 (inclusive of HST), up to the date of the Monitor’s Termination Certificate.²⁷

PART III - ISSUES

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

- (a) approve the Seventh Report, the activities of the Monitor referred to therein, as well as: (i) the fees and disbursements of the Monitor and its counsel, Stikeman, as set out in the Fee Affidavits, that have been incurred; and (ii) the Remaining Fees and Disbursements;
- (b) authorize the termination of the CCAA Proceedings;
- (c) terminate the Charges;
- (d) discharge FTI as Monitor of the Applicants at the CCAA Termination Time;
- (e) grant a release to the Monitor and its counsel;

²⁴ Seventh Report at para 46.

²⁵ Seventh Report at para 48.

²⁶ Seventh Report at para 49.

²⁷ Seventh Report at para 50.

- (f) authorize the Applicants or the Monitor, in their discretion or at the discretion of the Monitor, to make an assignment in bankruptcy before the CCAA Termination Time, and authorize but not obligate FTI to act as Trustee for each of the Applicants;
- (g) authorize, direct and empower the Trustee to hold and distribute any assets of the Applicants including any future assets, which assets shall not constitute property of the Applicants following any assignment in bankruptcy and shall not vest in the Trustee;
- (h) authorize the Trustee to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA;
- (i) authorize and direct the Monitor to transfer \$40,000 to the Trustee for the fees and disbursements of the Trustee and its counsel (plus applicable taxes), and authorizing and directing the Trustee to pay any available remainder from such retainer to Horizon; and
- (j) extend the Stay Period to the earlier of: (i) the CCAA Termination Time; and (ii) such other date as this Court may order.

PART IV - LAW

A. Seventh Report and Activities of the Monitor Should be Approved

31. A request to approve a monitor's report "is not unusual".²⁸ There are policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA Proceedings;
- (b) brings the Monitor's activities before the Court;

²⁸ *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*"Target"*].

- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - i. re-litigation of steps taken to date, and
 - ii. potential indemnity claims by the Monitor.²⁹

32. The form of the proposed CCAA Termination Order, with respect to approval of the Seventh Report and the Monitor's activities, is consistent with the language used in *Target*³⁰ and subsequent proceedings.³¹

33. During this period, the Monitor has fulfilled the role of Monitor as such role is described in the Initial Order and prescribed by the CCAA.

34. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order. No party has put forward evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should respect the good faith decisions of the Monitor in these CCAA Proceedings.

35. For these reasons, the Monitor believes it is appropriate for this Court to approve the Seventh Report and the activities of the Monitor referred to therein.

B. Fees and Disbursements of the Monitor and Stikeman should be Approved

36. The Monitor and Stikeman have been paid their fees and disbursements at their standard rates and charges by the Applicants from time to time, in accordance with paragraph 32 of the

²⁹ *Target*, *supra* note 28 at [para 22](#).

³⁰ *Target*, *supra* note 28 at [paras 7 and 26](#).

³¹ See, for example: [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension) at para 3.

Initial Order, as part of the costs of the CCAA Proceedings.³² The Monitor submits that this Court should approve the Monitor and its counsel's fees incurred and the Remaining Fees and Disbursements for the following reasons:

- (a) **The Fees are Fair and Reasonable.** In considering the “overriding principle of reasonableness”³³ and the overall value contributed by the Monitor and its counsel,³⁴ the fees incurred, and the Remaining Fees and Disbursements, are fair and reasonable in the circumstances;
- (b) **Factors Support Reasonableness Assessment.** The Court has recognized certain non-exhaustive factors which apply in this case,³⁵ including: (i) the complexity of the issues and the competing interests of multiple stakeholders; and (ii) the material, positive impact of the Monitor and Stikeman's efforts on advancing the CCAA Proceedings;
- (c) **Time Incurred.** The Monitor and Stikeman have named the individual professionals who have performed necessary work to advance the CCAA Proceedings.³⁶ The time spent, and the fees and disbursements, are commensurate with the significant role, responsibilities and activities undertaken;
- (d) **Knowledge, Experience and Skill.** The Monitor and Stikeman have significant knowledge, experience and skill in complex restructuring matters;
- (e) **Diligence and Thoroughness Displayed.** The breadth of matters detailed in the Monitor's Reports demonstrate the diligence and thoroughness displayed by the Monitor and Stikeman;
- (f) **Responsibilities Assumed.** The Monitor, with the assistance of Stikeman, carried out extensive activities since the date of the Sixth Report.³⁷
- (g) **Results achieved.** The efforts of the Monitor and its counsel, including the contribution to the completion of several critical steps in these proceedings, were integral to advancing the CCAA Proceedings;³⁸
- (h) **Cost of Comparable Services.** The Monitor and Stikeman billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms of comparable size and expertise for the provision of similar services.³⁹

³² Seventh Report at para 46.

³³ *Nortel Networks Inc*, [2022 ONSC 6680](#) [*Nortel Inc*] at [para 10](#).

³⁴ *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) [*Nortel Corp*] at [paras 15, 21](#).

³⁵ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at [para 33](#); **see also** *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at [para 23](#).

³⁶ Rosenberg Affidavit at para 8 and Exhibit “B”; Konyukhova Affidavit at para 8 and Exhibit “B”.

³⁷ Seventh Report at para 18.

³⁸ Second Report at para 18.

³⁹ Rosenberg Affidavit at paras 10-11, Seventh Report at Appendix “A”.

37. Accordingly, the above factors support this Court's approval of the fees and disbursements and the Remaining Fees and Disbursements of the Monitor and Stikeman.

B. CCAA Termination should be Approved

38. The proposed CCAA Termination Order provides that the CCAA Proceedings will be terminated, and FTI will be discharged as Monitor, upon the filing of the Monitor's Termination Certificate certifying that all Remaining CCAA Tasks have been completed.⁴⁰

39. Section 11 of the CCAA provides this Court with broad discretion to make "any order that it considers appropriate in the circumstances."⁴¹ The discretion conferred by section 11 of the CCAA is not boundless. Rather, it must be exercised in furtherance of CCAA's remedial objectives, having regard to whether:

- (a) the order sought is appropriate in the circumstances;
- (b) the debtor company is acting in good faith; and
- (c) the debtor company is acting with due diligence.⁴²

40. An order under section 11 of the CCAA will be appropriate where it "advances the policy objectives underlying the CCAA." These objectives include maximizing creditor recovery and providing a "timely, efficient and impartial resolution of a debtor's insolvency."⁴³

41. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination Order – terminating a debtor company's proceedings under the CCAA and discharging the court-appointed monitor.⁴⁴ Prior CCAA Termination Orders have also provided for a variety of additional relief to assist in the interim and subsequent periods surrounding the termination of the CCAA proceedings.

⁴⁰ Seventh Report at para 32.

⁴¹ CCAA, [s. 11](#).

⁴² *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#) ["**Callidus**"] at [para 49](#).

⁴³ *Callidus* at [paras 40](#) and [46](#).

⁴⁴ *In the Matter of a Plan of Compromise or Arrangement of GolfTown Canada Holdings Inc. et al*, [CCAA Termination Order](#) (March 29, 2018) (March 29, 2018), Toronto, CV-19-629552-00CL; *In the Matter of a Plan of Compromise or Arrangement of Old API Wind-Down Ltd.*, [CCAA Termination Order](#) (May 17, 2019), Toronto, CV-18-603053-00CL ("**API Termination Order**"); *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.*, [CCAA Distribution and Termination Order](#) (February 15, 2022), Toronto, CV-21-00673304-00CL.

42. Having regard to the foregoing considerations, the Monitor submits that it is appropriate for this Court to terminate the CCAA Proceedings in the manner contemplated by the CCAA Termination Order given that:

- (a) the Applicants have no ongoing business operations as the Horizon Transaction and the Equipment and Lease Transaction have now closed;⁴⁵
- (b) since the granting of the Initial Order, the Applicants have acted, and continue to act, in good faith and with due diligence;⁴⁶
- (c) all matters requiring resolution within the ambit of the CCAA proceedings, including the CCAA Remaining Tasks, will have been completed by the CCAA Termination Time, and the Monitor is not aware of any outstanding amounts owing in relation to the Charges that have not been reserved for in the Administrative Reserve;⁴⁷
- (d) the Monitor supports the termination of the CCAA Proceedings on the terms set out in the proposed CCAA Termination Order; and
- (e) no party other than the Secured Lenders currently has an economic interest in these CCAA Proceedings given that the Secured Lenders will not be repaid in full.⁴⁸

C. The Releases Should be Granted

43. The proposed CCAA Termination Order includes releases in favour of the Released Parties (which are limited to the Monitor, its counsel and each of their respective affiliates, directors, officers, partners, employees and agents only) from the Released Claims.⁴⁹

⁴⁵ Sixth Report at paras 18-19; Seventh Report at paras 19-20.

⁴⁶ Seventh Report at para 59.

⁴⁷ Seventh Report at para 41.

⁴⁸ Seventh Report at para 25.

⁴⁹ Seventh Report at para 43.

44. Courts have, on multiple occasions, approved releases in the absence of a CCAA plan, both on consent and in contested matters. These releases have been in favour of, among other parties, directors, officers, monitors, counsel, employees, shareholders and advisors.⁵⁰

45. In considering whether to approve releases in favour of third parties, Courts will consider the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, Courts have considered the following factors:

- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefitted the debtors as well as the creditors generally.⁵¹

46. Courts have acknowledged that, as in most discretionary exercises, it is not necessary for each of the above factors to apply in order for a release to be granted.⁵²

47. The releases sought by the Monitor are consistent with those that have previously been approved by this Court, and are appropriate in the circumstances, as:

- (a) **The Released Claims are rationally connected to the Applicants' restructuring.** The releases will have the effect of diminishing claims against the Released Parties. Given that the purpose of a CCAA proceeding is to maximize

⁵⁰ See, for example, *In the Matter of a Plan of Compromise or Arrangement of Timminco Limited, et al*, [CCAA Termination Order](#) (December 23, 2015), Toronto, CV-12-9539-00CL; **see also** *In the Matter of a Plan of Compromise or Arrangement of Greenspace Brands Inc., et al*, [CCAA Distribution and Termination Order](#) (September 26, 2023), Toronto, CV-23-00697516-00CL.

⁵¹ *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at [para 54](#); see also *Harte Gold Corp (Re)*, [2022 ONSC 653](#) ("**Harte Gold**") at [para 80](#).

⁵² *Harte Gold* at [para 80](#).

creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the Applicants' restructuring;

- (b) **The Released Parties contributed to the Applicants' restructuring.** Among other things, the extensive efforts of the Monitor and its counsel were instrumental to the conduct of the sales process, the claims process and the execution of the agreements related to the Horizon Transaction and the Equipment and Lease Transaction. The Released Parties contributed time, energy and resources to achieve these outcomes;
- (c) **The releases are fair and reasonable.** The releases are sufficiently narrow in the circumstances as the Released Claims do not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable released party. The proposed form of the CCAA Termination Order provides that the releases would be effective at the CCAA Termination Time;⁵³
- (d) **The Applicants' restructuring may be jeopardized without the releases.** The releases will bring certainty and finality for the Released Parties; and
- (e) **Creditors had knowledge of the nature and effect of the releases.** Creditors on the Service List were served with materials relating to this motion. The Monitor is not aware of any opposition to the Released Claims.⁵⁴

48. For the above reasons, the Monitor submits that the release of the Released Parties from the Released Claims is appropriate in the circumstances.

D. Applicants and Monitor should be Authorized to make an Assignment in Bankruptcy and Related Relief should be Granted

49. Paragraph 20 of the proposed CCAA Termination Order authorizes, directs and empowers the Trustee to hold and distribute any assets of the Applicants including any future assets, including, without limitation, any Tax Refunds, and any such future assets shall not constitute property of the Applicants following any assignment in bankruptcy and shall not vest in the Trustee. The proposed CCAA Termination Order also authorizes and directs the Monitor to

⁵³ Seventh Report at para 44.

⁵⁴ Seventh Report at para 45.

transfer \$40,000 to the Trustee for the fees and disbursements of the Trustee and its counsel (plus applicable taxes).

50. The proposed CCAA Termination Order at paragraphs 21 and 22 also provides for various procedural orders that will assist the Trustee with the subsequent bankruptcy proceedings. CCAA Courts have granted similar orders in seeking to facilitate the subsequent proceedings, including with respect to the administration of the bankrupts' estates on a consolidated basis as proposed here.⁵⁵

51. The CCAA provides the Court with broad discretion in respect of the Monitor's functions in a particular CCAA proceeding. Section 23(1)(k) of the CCAA provides that the Monitor can "carry out any other functions in relation to the [debtor] company that the court may direct".⁵⁶ In addition, section 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances.⁵⁷

52. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination Order with respect to authorization for the debtor company to be assigned in bankruptcy.⁵⁸

E. Stay Extension should be Granted

53. The Stay Period currently expires on December 1, 2023.

54. The Monitor is seeking a further extension of the Stay Period to the earlier of: (a) the CCAA Termination Time; and (b) such other date as this Court may order.

55. Pursuant to subsections 11.02(2) and 11.02(3) of the CCAA, the Court may grant an extension of the Stay Period for "any period that the court considers necessary", where: (a) the

⁵⁵ See *In the Matter of a Plan of Compromise or Arrangement of TGF Acquisition Parent Ltd et al*, [Wind Down Order](#) (June 22, 2021), Toronto, CV-21-00657098-00CL ("TGF Wind Down Order"); and *In the Matter of a Plan of Compromise or Arrangement of King Street Company et al*, [Termination Order](#) (March 29, 2021), Toronto, CV-20-00650945-00CL; *In the Matter of the Notice of Intention to Make a Proposal of Whyte's Foods Inc.*, [NOI Termination and Transition Order](#) (October 6, 2023), Toronto, Estate No. 31-2978830; *In the Matter of a Plan of Compromise or Arrangement of Canwest Global Communications Corp., et al*, [CMI Transition Order](#) (October 21, 2011), Toronto, CV-09-8396-00CL.

⁵⁶ CCAA, [s. 23\(1\)\(k\)](#).

⁵⁷ CCAA, [s. 11](#).

⁵⁸ [TGF Wind Down Order](#), *supra* note 55; [API Termination Order](#), *supra* note 44.

Applicant satisfies the Court that circumstances exist that make the order appropriate; and (b) the Applicant satisfies the Court that it has acted, and is acting, in good faith and with due diligence.⁵⁹

56. The Court's jurisdiction to stay proceedings under section 11.02 "should be construed broadly to accomplish the legislative purposes of the CCAA".⁶⁰ The well-established purpose of a CCAA stay is to "give a debtor the 'breathing room' required to restructure with a view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down".⁶¹

57. The proposed Stay Extension is appropriate in the circumstances as it will allow the IMV Group, with the assistance of the Monitor, to complete the Remaining CCAA Tasks.⁶²

58. The funds in the Monitor's possession will provide sufficient liquidity to fund the IMV Group's remaining obligations and the costs of the CCAA Proceedings through the end of the Stay Extension. Any remaining funds available following completion of the CCAA Proceedings and the BIA proceedings will be paid to Horizon.⁶³

59. Based on the information presently available, the Monitor believes that the creditors will not be materially prejudiced by the proposed Stay Extension. The Monitor believes that the Applicants have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make the Stay Extension appropriate.⁶⁴

60. For these reasons, the Monitor submits that the proposed extension of the Stay Period to the earlier of (a) the CCAA Termination Time; and (b) such other date as this Court may order, is in the best interest of the Applicants and their stakeholders, is consistent with the purposes of the CCAA and is appropriate in the circumstances.

⁵⁹ CCAA, [s. 11.02\(2\) and \(3\)](#).

⁶⁰ *Canwest Global Communications Corp*, [2011 ONSC 2215](#) at [para 24](#).

⁶¹ *Re Target Canada Co*, [2015 ONSC 303](#) at [para 8](#).

⁶² Seventh Report at para 57.

⁶³ Seventh Report at para 58.

⁶⁴ Seventh Report at para 59.

PART V - RELIEF SOUGHT

61. For the above reasons, the Monitor requests this Court's approval of the CCAA Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of November, 2023.



STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova (LSO# 52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Natasha Rambaran (LSO# 80200N)
Tel: (416) 869-5504
Email: nrambaran@stikeman.com

Lawyers for the Monitor,
FTI Consulting Canada Inc.

SCHEDULE “A” – LIST OF AUTHORITIES

1. *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#).
2. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#).
3. *Canwest Global Communications Corp*, [2011 ONSC 2215](#).
4. *Harte Gold Corp (Re)*, [2022 ONSC 653](#).
5. *In the Matter of the Notice of Intention to Make a Proposal of Whyte’s Foods Inc.*, [NOI Termination and Transition Order](#) (October 6, 2023), Toronto, Estate No. 31-2978830.
6. *In the Matter of a Plan of Compromise or Arrangement of Canwest Global Communications Corp., et al*, [CMI Transition Order](#) (October 21, 2011), Toronto, CV-09-8396-00CL.
7. *In the Matter of a Plan of Compromise or Arrangement of GolfTown Canada Holdings Inc. et al*, [CCAA Termination Order](#) (March 29, 2018), Toronto, CV-19-629552-00CL.
8. *In the Matter of a Plan of Compromise or Arrangement of Greenspace Brands Inc., et al*, [CCAA Distribution and Termination Order](#) (September 26, 2023), Toronto, CV-23-00697516-00CL.
9. *the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.*, [CCAA Distribution and Termination Order](#) (February 15, 2022), Toronto, CV-21-00673304-00CL.
10. *In the Matter of a Plan of Compromise or Arrangement of King Street Company et al*, [Termination Order](#) (March 29, 2021), Toronto, CV-20-00650945-00CL.
11. *In the Matter of a Plan of Compromise or Arrangement of Old API Wind-Down Ltd.*, [CCAA Termination Order](#) (May 17, 2019), Toronto, CV-18-603053-00CL.
12. *In the Matter of a Plan of Compromise or Arrangement of TGF Acquisition Parent Ltd et al*, [Wind Down Order](#) (June 22, 2021), Toronto, CV-21-00657098-00CL.
13. *In the Matter of a Plan of Compromise or Arrangement of Timminco Limited, et al*, [CCAA Termination Order](#) (December 23, 2015), Toronto, CV-12-9539-00CL.
14. *Lydian International Limited (Re)*, [2020 ONSC 4006](#).
15. *Nortel Networks Inc*, [2022 ONSC 6680](#).
16. [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension).

17. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#).
18. *Re Target Canada Co*, [2015 ONSC 303](#).
19. *Re Target Canada Co*, [2015 ONSC 7574](#).
20. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#).

SCHEDULE "B" – STATUTORY AUTHORITY

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (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

11.02 (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.

Duties and functions

23 (1) The monitor shall

- (a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
 - (i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
 - (ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

**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 IMV INC. ET AL.**

Hfx No. 523334.

SUPREME COURT OF NOVA SCOTIA

**FACTUM OF THE MONITOR
(CCAA TERMINATION ORDER)
(RETURNABLE NOVEMBER 29, 2023)**

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova (LSO# 52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Natasha Rambaran (LSO# 80200N)
Tel: (416) 869-5504
Email: nrambaran@stikeman.com

Lawyers for the Monitor,
FTI Consulting Canada Inc.