

2023

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
(Re: Extension and Approval of Sixth Report and Monitor’s Activities)
(Returnable October 25, 2023)**

October 24, 2023

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1. FTI Consulting Canada Inc. (“**FTI**”), in its capacity as Monitor of the Applicants (the “**Monitor**”) in the above proceedings (the “**CCAA Proceedings**”), seeks an order (the “**Extension and Approval Order**”):

- (a) extending the Stay Period (as defined in the Amended and Restated Initial Order dated May 5, 2023, as further amended on September 27, 2023) until and including December 1, 2023; and
- (b) approving the Sixth Report of the Monitor dated October 20, 2023 (the “**Sixth Report**”) and the activities of the Monitor referred to therein.

PART II - FACTS

2. The facts with respect to this motion are set out in the Sixth Report. Capitalized terms used herein but not otherwise defined have the meanings given to them in the Sixth Report.

PART III - ISSUES

3. The issues on this motion are whether this Court should: (a) grant the requested extension of the Stay Period until and including December 1, 2023; and (b) approve the Sixth Report and the Monitor’s activities referred to therein.

PART IV - LAW

A. Stay Extension should be Granted

4. The Stay Period currently expires on October 27, 2023.

5. 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 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.¹

6. The Court’s jurisdiction to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.² 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”.³

7. In this case, the proposed extension of the Stay Period is appropriate given that:

(a) it is necessary in order for the Monitor to:

(i) close the Equipment and Lease Transaction;

(ii) assist with the sale of the IMV Group’s remaining assets;

(iii) make payments on remaining outstanding post-filing invoices; and

(iv) complete the CCAA Proceedings and address any outstanding wind-down activities;⁴

(b) the IMV Group is forecast to have sufficient liquidity to fund their obligations and the cost of the CCAA Proceedings through the end of the Stay Extension;⁵

¹ CCAA, [s. 11.02\(2\) and \(3\)](#).

² *Canwest Global Communications Corp*, [2011 ONSC 2215](#) [“*Canwest*”] at [para 24](#).

³ *Re Target Canada Co*, [2015 ONSC 303](#) at [para 8](#).

⁴ Sixth Report at para 33.

⁵ Sixth Report at para 34.

- (c) the Monitor does not believe that the IMV Group's creditors would be materially prejudiced by the proposed extension of the Stay Period; and
- (d) the IMV Group has acted, and is continuing to act, in good faith and with due diligence.⁶

8. For these reasons, the Monitor submits that the proposed extension of the Stay Period to and including December 1, 2023, 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.

B. Sixth Report and the Activities of the Monitor should be Approved

9. A request to approve a monitor's report "is not unusual".⁷ 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;
- (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.⁸

⁶ Sixth Report at para 35.

⁷ *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*"Target"*].

⁸ *Target*, *supra* at [para 22](#).

10. The form of the proposed Extension and Approval Order, with respect to approval of the Sixth Report and the Monitor's activities, is consistent with the language used in *Target*⁹ and subsequent proceedings.¹⁰

11. Since the date of the Fifth Report of the Monitor dated September 22, 2023, the Monitor has undertaken the following activities:

- (a) engaged with the Monitor's legal counsel, Stikeman Elliott LLP ("**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;
- (f) continued to assist with the sale of the IMV Group's lab equipment and assignment of the related lease;
- (g) continued to assist with activities of due diligence requests to facilitate the closing of the Transaction and any distributions; and
- (h) made distributions to Horizon.¹¹

12. 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.

⁹ *Target*, *supra* at [paras 7 and 26](#).

¹⁰ 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.

¹¹ Sixth Report at para 17.

13. 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.

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

PART V - RELIEF SOUGHT

15. For the above reasons, the Monitor requests this Court's approval of the Extension and Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of October, 2023.



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SCHEDULE "A" – LIST OF AUTHORITIES

1. *Canwest Global Communications Corp*, [2011 ONSC 2215](#).
2. [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).
3. *Re Target Canada Co*, [2015 ONSC 303](#).
4. *Re Target Canada Co*, [2015 ONSC 7574](#).

SCHEDULE "B" – STATUTORY AUTHORITY

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.

**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
(EXTENSION AND APPROVAL OF THE SIXTH REPORT
AND MONITOR'S ACTIVITIES)
(RETURNABLE OCTOBER 25, 2023)**

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