Court File No. 19-V-00632052-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 **AGMEDICA BIOSCIENCE INC. 2472602 ONTARIO INC., 2642466 ONTARIO INC., 8895309 CANADA INC., WELLWORTH HEALTH CORP., 8050678 CANADA INC., 8326851 CANADA INC., TAVIVAT NATURALS INC., WORLDWIDE BEVERAGE INNOVATIONS INC., UNIQUE BEVERAGES (USA) INC., and ESEELA INC.**
(each an **"Applicant"** and collectively, the **"Applicants"**)

Applicants

FACTUM OF THE APPLICANTS

December 11, 2019

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PART I - OVERVIEW

1. AgMedica Bioscience Inc. ("**AgMedica**"), the primary Applicant, is a licenced producer of cannabis in accordance with the *Cannabis Act* (the "**Act**") and the *Cannabis Regulations* (the "**Regulations**") located in Chatham-Kent, Ontario.

2. The Applicants continue to face a liquidity crisis primarily due to changing market sentiment towards the cannabis sector. As a result, the Applicants sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**")[1] in order to, among other things: (i) maintain the *status quo* and going concern value of their operations; (ii) preserve jobs for their employees; and (iii) obtain debtor-in-

[1] R.S.C. 1985, c. C-36 [**CCAA**].

possession financing ("**DIP Financing**") to provide the Applicants with sufficient breathing room to implement their restructuring strategy.

3. The Applicants were granted creditor protection under the CCAA pursuant to the Initial Order of Mr. Justice Hainey dated December 2, 2019 (the "**Initial Order**").

4. This factum is filed in connection with the comeback motion (the "**Comeback Motion**") in the CCAA proceedings of the Applicants in accordance with the terms of Initial Order, upon which the Applicants seek the following relief:

   (a) an order (the "**Amended and Restated Initial Order**") under the CCAA that, among other things:

      (i) extends the stay of proceedings (the "**Stay Period**") until March 12, 2020;

      (ii) increases the Administration Charge from $250,000 to $500,000;

      (iii) increases the DIP Charge from the principal amount of $1,000,000 to $7,500,000 and replaces the existing DIP Lender with SV Bridge III, LP ("**Stabilis**"), one of the Applicants' secured creditors; and

      (iv) increases the Directors' Charge from $250,000 to $900,000; and

   (b) an order (the "**Non-Core Real Estate Order**") approving, among other things, the Applicants' retention of CBRE Limited ("**CBRE**") to market and sell the Non-Core Real Property.

PART II - FACTS

5. Capitalized terms not otherwise defined herein are defined in the affidavit of Trevor Henry sworn December 6, 2019 (the "**Henry Affidavit**"). The facts of this Application are more fully described in the Henry Affidavit and the Initial Affidavit.

6. Unless otherwise stated herein, monetary amounts are stated in Canadian dollars.

7. Since the Filing Date, the Applicants have continued carrying on business in the ordinary course.[2]

Non-Core Real Property Sales Process

8. As part of their restructuring strategy, the Applicants are seeking the Court's approval to sell the Non-Core Real Property with the assistance of the Monitor.[3]

9. Selling the Non-Core Real Property is in the best interests of the Applicants and their stakeholders generally. Doing so will generate liquidity while simultaneously deleveraging the business. A key component of the Applicants' operational restructuring strategy is to focus their efforts on expanding production capacity and reducing input costs with respect to the production of Cannabis Products at the Riverview Facility. The Non-Core Real Property does not factor into this strategy.[4]

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[2] Affidavit of Trevor Henry, sworn December 6, 2019 at para 13 [***Henry Affidavit***].
[3] *Henry Affidavit* at para 14.
[4] *Henry Affidavit* at para 15.

10. In November 2019, the Applicants entered into various Listing Agreements with CBRE in respect of certain of the Non-Core Real Property.[5]

11. The Applicants, with the assistance of CBRE and the Monitor, intend to run a robust sales process with respect to the Non-Core Real Property in order to maximize value for the Applicants and their stakeholders. CBRE has advised that there is considerable preliminary market interest in the Non-Core Real Property.[6]

12. The Applicants have already received multiple offers with respect to the Non-Core Real Property that will be reviewed by the Monitor. In addition, the Applicants have signed an agreement of purchase and sale with respect to 830 Richmond, which is the only Non-Core Real Property that was listed without the assistance of CBRE.[7]

DIP Financing

13. On December 10, 2019, the Applicants entered into an agreement (the "**Stabilis Agreement**") with Stabilis, one of the Applicants' secured creditors, wherein Stabilis agreed to loan a maximum principal amount of $7,500,000 to the Applicants (the "**Stabilis DIP Facility**"), subject to the terms and conditions prescribed therein.[8]

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[5] *Henry Affidavit* at para 17.
[6] *Henry Affidavit* at para 18.
[7] *Henry Affidavit* at para 19.
[8] Stabilis Agreement dated December 10, 2019, as attached to the First Report of the Monitor [***First Report***].

14. If approved by the Court, the Stabilis Agreement will replace the DIP Facility Agreement entered into between Hillmount (the existing DIP Lender) and the Applicants dated November 29, 2019 (the "**Hillmount Agreement**").[9]

15. The Stabilis Agreement is conditional upon the Amended and Restated Initial Order terminating the DIP Charge in connection with the Hillmount Agreement and replacing it with a DIP Charge in favour of the Stabilis Agreement.[10]

16. Any of the Applicants' existing indebtedness pursuant to the Hillmount Agreement, including all fees and interest, will be paid in full forthwith using funds made available to the Applicants under the Stabilis DIP Facility.[11]

17. The terms of the Stabilis Agreement are substantially similar to the Hillmount Agreement.[12]

18. Further, in contrast to the Hillmount Agreement, the Stabilis Agreement is supported by the majority of the Applicants' secured creditors in number and value. In the aggregate, under the Stabilis Agreement, the Applicants' secured creditors are more adequately protected and receive a more equitable distribution of any proceeds derived from selling the Non-Core Real Property, against which they are primarily secured.[13]

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[9] *First Report* at para 45.
[10] Stabilis Agreement dated December 10, 2019, as attached to the *First Report*.
[11] *First Report* at para 45.
[12] *First Report* at para 47.
[13] *First Report* at paras 45-46.

19. As discussed in more detail in the First Report of the Monitor (the "**First Report**"), which will be filed in connection with the Comeback Motion, the Monitor is of the view that the Stabilis Agreement is in the best interests of the Applicants and their stakeholders generally.

20. The Stabilis DIP Facility is required in order for the Applicants to: (i) maintain operating cash; (ii) fund the costs of their operations and these CCAA proceedings; and (iii) pursue and implement their restructuring strategy.

21. The Cash Flow Forecast demonstrates that if the Amended and Restated Initial Order is granted, and the DIP Charge with respect to the Stabilis DIP Facility is approved, the Applicants will have sufficient liquidity to meet their obligations during the proposed extension of the stay of proceedings.

PART III - THE LAW AND ANALYSIS

22. The issues on this Comeback Motion are as follows:

(a) whether this Court should extend the Stay Period until March 12, 2020;

(b) whether this Court should increase the Administration Charge from $250,000 to $500,000;

(c) whether this Court should increase the DIP Charge from $1,000,000 to $7,500,000;

(d) whether this Court should increase the Directors' Charge from $250,000 to $900,000;

(e) whether the relief sought on this Comeback Motion is reasonably necessary; and

(f) whether this Court should grant the Non-Core Real Estate Order.

A. It is appropriate to extend the Stay Period until March 12, 2020

23. Pursuant to section 11.02 of the CCAA, the Court may, on an application in respect of a debtor company other than an initial application, grant an extension of a stay of proceedings where: (i) the applicant satisfies the Court that an extension of the stay of proceedings is appropriate in the circumstances; and (ii) the applicant further satisfies the Court that it has acted, and is acting, in good faith and with due diligence.[14]

24. When deciding whether to grant an extension of the stay of proceedings, the Court will focus on whether the foregoing requirements have been satisfied. The length of the stay extension is discretionary. The extension date should be one that allows the parties some flexibility.[15]

25. Since the granting of the Initial Order, the Applicants have taken numerous steps to begin implementing their restructuring strategy. With the assistance of the Monitor, the Applicants have, among other things:

(a) continued carrying on business in the ordinary course;

(b) engaged in open communication with the Applicants' stakeholders;

(c) continued to refine the core business plan for the proposed restructuring;

(d) listed and marketed the Non-Core Real Property for the benefit of all the Applicants' stakeholders;

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[14] CCAA, s. 11.02(2)-(3).

[15] *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808 at para 21, Applicants' Book of Authorities ("**Applicants' BOA**") at Tab 1; see also *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4788 (ONSC), Applicants' BOA at Tab 2.

(e) engaged in various discussions with certain of the Applicants' stakeholders regarding potential DIP Financing alternatives; and

(f) engaged frequently with the Monitor with respect to all aspects of the Applicants' restructuring process and have provided the Monitor with complete access to the Applicants' property, premises, books, and records.

26. The Applicants are acting in good faith and with due diligence in pursuing their restructuring strategy. Further, as demonstrated in the Cash Flow Forecast, the Applicants have sufficient liquidity to continue operating during the proposed extension of the Stay Period.

27. The Applicants require an extension of the Stay Period until March 12, 2020, in order to preserve the *status quo* and obtain the breathing room required in order to implement their restructuring strategy. Such an extension is in the best interests of the Applicants and their stakeholders generally.

28. The Monitor supports extending the Stay Period until March 12, 2020, and is of the view that the Applicants are acting in good faith and with due diligence.

B. The increase in the Administration Charge should be approved

29. The Applicants request that this Court increase the Administration Charge to the amount of $500,000. Section 11.52 of the CCAA provides the Court statutory jurisdiction to grant the Administration Charge:

> 11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in

> an amount that the court considers appropriate — in respect of the fees and expenses of
>
> (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.
>
> 11.52 (2) Priority – The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.[16]

30. In *Canwest Publishing*, Justice Pepall considered section 11.52 of the CCAA and identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:

    (a) the size and complexity of the business being restructured;

    (b) the proposed role of the beneficiaries of the charge;

    (c) whether there is an unwarranted duplication of roles;

    (d) whether the quantum of the proposed charge appears to be fair and reasonable;

    (e) the position of the secured creditors likely to be affected by the charge; and

    (f) the position of the monitor.[17]

31. Increasing the Administration Charge to $500,000 is warranted, necessary, and appropriate in the circumstances, given that:

    (a) the proposed restructuring will require the extensive involvement of the professional advisors subject to the Administration Charge;

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[16] CCAA, s. 11.52.

[17] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 54, Applicants' BOA at Tab 3.

(b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicants;

(c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;

(d) the Administration Charge will rank in priority to the DIP Charge, the Directors' Charge, and any existing security granted by the Applicants in favour of the Secured Creditors, all of whom were provided with notice that the Applicants were commencing this Application for creditor protection pursuant to the CCAA; and

(e) the Monitor believes that the proposed quantum of the Administration Charge is reasonable.[18]

C. The increase in the DIP Charge should be approved

i. *Overview of Stabilis Agreement*

32. As discussed above, the Applicants were able to secure replacement DIP Financing from Stabilis pursuant to the Stabilis Agreement. If approved by this Court, the Stabilis Agreement will replace the Hillmount Agreement.

33. The Applicants' access to the Stabilis DIP Facility is conditional upon the provision of an order of this Court, among other things, approving the Stabilis Agreement and granting a DIP Charge in the principal amount of $7,500,000, subject to the terms of the Stabilis Agreement.

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[18] Affidavit of Trevor Henry, sworn December 1, 2019 at paras 111-113 [***Initial Affidavit***].

34. The DIP Charge is proposed to rank behind the Administration Charge, but ahead of the Directors' Charge and any existing security granted by the Applicants in favour of their secured creditors.

ii. *Jurisdiction to Approve the DIP Charge*

35. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Charge:

> 11.2(1) Interim Financing — On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.[19]

36. Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Charge rank in priority over the claim of any secured creditor of the company:

> 11.2(2) Priority — Secured Creditors — The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.[20]

37. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a DIP charge:

(a) the period during which the company is expected to be subject to proceedings under this Act;

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[19] CCAA, s. 11.2(1).
[20] CCAA, s. 11.2(2).

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report.[21]

38. Courts have consistently held that DIP financing should be granted in order to "keep the lights on," and be limited to terms that are "reasonably necessary" for the continued operation of the debtor company.[22] For example, a recent decision in British Columbia considering s. 11.2(5) approved DIP financing on the basis that it was "necessary to permit the [applicant] to maintain the value of the enterprise while they pursue a restructuring."[23]

iii. *The Criteria in Subsections 11.2(1), 11.2(4), and 11.2(5) are Satisfied*

39. Based on following factors, the DIP Charge should be approved:

(a) the notice requirements under 11.2(1) have been met;

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[21] CCAA, section 11.2(4).
[22] *Royal Oak Mines Inc., Re*, [1999] OJ No 709 (ONSC – Commercial List) at paras 21-24[***Royal Oak***], Applicants' BOA at Tab 4.
[23] *Miniso International Hong Kong Ltd v. Migu Investments Inc.*, 2019 BCSC 1234, Applicants' BOA at Tab 5.

(b) the Applicants, in consultation with the Monitor, have established a business plan to ensure that costs can be reduced to the greatest extent reasonably possible during these CCAA proceedings;

(c) given their current financial circumstances, the Applicants could not have obtained alternative financing outside of these CCAA proceedings prior to exhausting their liquidity;

(d) the Applicants' liquidity is dependent on the Stabilis DIP Facility;

(e) the Stabilis DIP Facility is necessary in order for AgMedica to implement its restructuring plan, which will preserve the value of AgMedica's business for the benefit of all of the Applicants' stakeholders;

(f) without the Stabilis DIP Facility, AgMedica will not be able to remain in business and make payroll, jeopardizing the jobs of approximately 160 full-time employees in the Chatham-Kent region;

(g) the quantum of the Stabilis DIP Facility is reasonable and appropriate having regard to the Cash Flow Forecast;

(h) the Monitor is of the view that the Stabilis DIP Facility and DIP Charge are appropriate and limited to what is reasonably necessary in the circumstances.

D. The increase in the Directors' Charge should be approved

40. To ensure the ongoing stability of the Applicants' business during these CCAA proceedings, the Applicants require the continued participation of the directors and officers

who manage their business and commercial activities. The directors and officers of the Applicants have considerable institutional knowledge and valuable experience.[24]

41. The Applicants request that this Court increase the Directors' Charge to the amount of $900,000. The Directors' Charge protects the directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The Directors' Charge will only be available to the extent liability is not covered by the Applicants' D&O Insurance (as defined in the Initial Affidavit).[25]

42. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.[26]

43. In approving a similar charge in *Canwest*, Justice Pepall applied section 11.51 of the CCAA and noted the Court must be satisfied with the amount of the charge and that it is limited to obligations the directors and officers may incur after the commencement of the proceedings, so long as adequate insurance cannot be obtained at a reasonable cost.[27]

44. In *Jaguar Mining Inc., Re,* R.S.J. Morawetz (as he then was) stated that, in order to grant a Directors' Charge, the Court must be satisfied of the following factors:

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[24] *Initial Affidavit* at para 117.
[25] *Initial Affidavit* at para 119.
[26] CCAA, s. 11.51.
[27] *Canwest Global Communications Corp., Re,* [2009] OJ No 4286 (ONSC – Commercial List) at paras 46 and 48, Applicants' BOA at Tab 6.

(a) notice has been given to the secured creditors likely to be affected by the charge;

(b) the amount is appropriate;

(c) the applicant could not obtain adequate indemnification insurance for the director at a reasonable cost; and

(d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.[28]

45. With respect to the Applicants, the Directors' Charge is reasonable in the circumstances because: (i) the Applicants have given notice to the secured creditors likely to be affected by the Directors' Charge; (ii) the Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances; (iii) the Applicants cannot be certain whether the insurance providers will deny coverage for various reasons, and the Applicants may not have sufficient funds available to satisfy any contractual indemnity should its directors and officers need to call upon such indemnities; (iv) the Applicants will require the active and committed involvement of the directors and officers, whose continued participation is necessary for an effective restructuring; and (iv) the Directors' Charge does not secure obligations incurred by a director as a result of the director's gross negligence or wilful misconduct.

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[28] *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para 45, Applicants' BOA at Tab 7.

E. The Relief Sought is Reasonably Necessary

46. On November 1, 2019, the CCAA was amended to include section 11.001:[29]

> An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

47. The stated purpose of this amendment is to "[enhance] retirement security by making the insolvency process fairer, more transparent and more accessible" by, among other things, limiting "the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players".[30]

48. This amendment is consistent with existing jurisprudence, which states that the terms of Initial Orders should be limited to terms that are "reasonably necessary for the continued operation of the debtor company during a brief but realistic period of time."[31]

49. The Applicants submit that the relief sought on this Comeback Motion pursuant to the proposed Amended and Restated Initial Order is in accordance with the limitation in section 11.001 and is consistent with the spirit of the CCAA as remedial legislation

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[29] CCAA, s. 11.001.

[30] Canada, Innovation, Science and Economic Development Canada, *Insolvency reforms to come into force*, News Release (Ottawa: Media Relations) 2019 at 2; Canada, Marketplace Framework Policy Branch, *Order Fixing November 1, 2019 as the Day on Which Certain Provisions of the two Acts Come into Force: SI/2019-90*, Canada Gazette, Part II, Volume 153, Number 18.

[31] *Royal Oak, supra* note 23 at paras 21-24, Applicants' BOA at Tab 4.

intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy.[32]

50. The Applicants have limited the relief sought on this Comeback Motion to that which is reasonably necessary in the circumstances for the continued operations of their business. Accordingly, the Applicants submit that the relief sought on this Comeback Motion is in accordance with section 11.001 and should be granted.

F. The Non-Core Real Estate Order should be granted

51. In *Nortel*, the Court identified several factors to consider in determining whether to approve a sales process:

(a) is a sale warranted at this time?

(b) will the sale be of benefit to the whole "economic community"?

(c) do any of the debtors' creditors have a *bona fide* reason to object to the sale?

(d) is there a better viable alternative?[33]

52. The Courts have previously noted that, while technically not applicable at the process approval stage of the proceeding, the factors set out in subsection 36(3) of the CCAA may also be considered.

53. Subsection 36(3) of the CCAA grants the Court express jurisdiction to authorize and approve the sale or disposition of assets outside the ordinary course of business. The six

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[32] *Re Lehndorff General Partners Ltd*, (1993), 17 CBR (3d) 24 at para 5 (ONSC – Commercial List), Applicants' BOA at Tab 8; *Cinram International Inc, Re*, 2012 ONSC 3767 at para 58 [Cinram], Applicants' BOA at Tab 9.
[33] *Nortel Networks Corp, Re*, [2009] OJ No 3169 (ONSC - Commercial List) at para 49, Applicants' BOA at Tab 10.

non-exhaustive factors that a Court must consider on a sale approval motion made pursuant to section 36 are as follows:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or distribution;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which creditors were consulted;

(e) the effects of the proposed sale or distribution on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.[34]

54. Considering the *Nortel* criteria and the applicable factors enumerated in subsection 36(3) of the CCAA, the Non-Core Real Estate Order should be granted on the basis that:

(a) selling the Non-Core Real Property is warranted at this time as it will allow the Applicants to generate liquidity while simultaneously deleveraging the business;

(b) a sale will benefit the whole economic community as the value derived from any sale of the Non-Core Real Property will flow to the Applicants' stakeholders;

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[34] CCAA, s. 36(3).

(c) the majority of the Applicants' secured creditors in number and value support the granting of the Non-Core Real Estate Order; and

(d) the Applicants, in consultation with the Monitor, have determined that selling the Non-Core Real Property is a key component to the Applicants' restructuring strategy and there is no better alternative to conducting a sales process with respect to the Non-Core Real Property.

55. The Applicants, with the assistance of CBRE and the Monitor, intend to run a robust sales process with respect to the Non-Core Real Property in order to maximize value for the Applicants and their stakeholders. Accordingly, the Non-Core Real Estate Order ought to be granted.

PART IV - RELIEF REQUESTED

56. For all of the foregoing reasons, the Applicants request that this Court grant: (i) an Order substantially in the form of the draft Amended and Restated Initial Order; and (ii) an Order substantially in the form of the draft Non-Core Real Estate Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of December, 2019.

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SCHEDULE "A" – LIST OF AUTHORITIES

Cases Cited

1. *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808.
2. *Canwest Global Communications Corp., Re*, [2009] OJ No 4788 (ONSC – Commercial List).
3. *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222.
4. *Royal Oak Mines Inc., Re*, [1999] OJ No 709 (ONSC – Commercial List).
5. *Miniso International Hong Kong Ltd v. Migu Investments Inc.*, 2019 BCSC 1234.
6. *Canwest Global Communications Corp., Re*, [2009] OJ No 4286 (ONSC – Commercial List).
7. *Jaguar Mining Inc., Re*, 2014 ONSC 494.
8. *Re Lehndorff General Partners Ltd*, (1993), 17 C.B.R. (3d) 24 (ONSC – Commercial List).
9. *Cinram International Inc., Re*, 2012 ONSC 3767.
10. *Nortel Networks Corp, Re*, [2009] OJ No 3169 (ONSC – Commercial List).

Secondary Sources

1. Canada, Innovation, Science and Economic Development Canada, *Insolvency reforms to come into force,* News Release, (Ottawa: Media Relations) 2019.
2. Canada, Marketplace Framework Policy Branch, *Order Fixing November 1, 2019 as the Day on Which Certain Provisions of the two Acts Come into Force: SI/2019-90*, Canada Gazette, Part II, Volume 153, Number 18.

SCHEDULE "B" – RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Section 11

General power of court
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.

Section 11.001

Relief reasonably necessary
An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
>
> (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
(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.

Restriction
(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.2

Interim financing
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders
(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered
(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application
(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.51

Security or charge relating to director's indemnification
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance
(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault
(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Section 11.52

Court may order security or charge to cover certain costs
(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act. Priority (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Section 36

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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 **AGMEDICA BIOSCIENCE INC., 2472602 ONTARIO INC., 2642466 ONTARIO INC., 8895309 CANADA INC., WELLWORTH HEALTH CORP., 8050678 CANADA INC., 8326851 CANADA INC., TAVIVAT NATURALS INC., WORLDWIDE BEVERAGE INNOVATIONS INC., UNIQUE BEVERAGES (USA) INC., and ESEELA INC.**

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