Court File No. CV-20-00638930-00CL

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicant

MOTION RECORD OF THE UNDERWRITERS
(Responding to the Applicants' Motion, returnable January 29, 2021)

January 28, 2021

Torys LLP
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Lawyers for the Applicant

TO: **SERVICE LIST**

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Applicants

AFFIDAVIT OF COLETTE KOOPMAN
(affirmed January 27, 2021)

I, Colette Koopman, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an articling student at Torys LLP, Canadian counsel to the Underwriters[1] in these proceedings, and, as such, have knowledge of the matters contained in this Affidavit. I affirm this Affidavit in connection with the Applicants' motion, returnable January 29, 2021, for a stay extension, the appointment of claimant representatives and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**").

2. In connection with the above, the following correspondence is attached to my Affidavit:

   (a) **Exhibit "A"**: Letter from my colleague, John A. Fabello, to CannTrust Holdings Inc., Cannamed Financial Corporation and Cajun Capital Corporation, dated December 15, 2020;

[1] Merrill Lynch Canada Inc., Merrill Lynch Pierce, Fenner & Smith, Inc., Citigroup Global Markets Canada Inc., Citigroup Global Markets Inc., Credit Suisse Securities (Canada) Inc., Credit Suisse Securities (USA) LLC, RBC Dominion Securities Inc., Jefferies LLC, Canaccord Genuity LLC (collectively, the "**Underwriters**").

(b) **Exhibit "B"**: Email correspondence between my colleague, David Bish, and Jamey Gage of McCarthy Tetrault LLP, dated December 31, 2020; and

(c) **Exhibit "C"**: Letter from my colleague, John A. Fabello, to Shane C. D'Souza of McCarthy Tetrault LLP, dated January 27, 2021.

AFFIRMED REMOTELY by Colette Koopman at the City of Toronto in the Province of Ontario, before me on January 27, 2021 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

MICHAEL NOEL
(LSO#: 80130F)

Colette Koopman

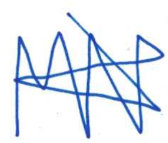
THIS IS **EXHIBIT "A"** REFERRED TO IN THE

AFFIDAVIT OF COLETTE KOOPMAN**,**

AFFIRMED REMOTELY BY COLETTE KOOPMAN

BEFORE ME *BY VIDEO CONFERENCE*, THIS 27th

DAY OF JANUARY, 2021.



Michael Noel

Commissioner for Taking Affidavits

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John A. Fabello
jfabello@torys.com
P. 416.865.8228

December 15, 2020

MAIL

CannTrust Holdings Inc.
7300 Keele St.
Vaughan, ON L4K 1Z9
Attn: Greg Guyatt, CEO

Cannamed Financial Corporation
106 Avenue Road
Toronto, ON M5R 2H3
Attn: Stan Abramowitz

Cajun Capital Corporation
40 Sheppard Ave. W.
Suite 700
Toronto, ON M2N 6K9
Attn: Mitchell Sanders

Dear Sirs:

Re: Underwriting Agreement among CannTrust Holdings Inc., Cannamed Financial Corporation, Cajun Capital Corporation, Merrill Lynch Pierce Fenner & Smith Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC and RBC Dominion Securities Inc. (as representatives of other named Underwriters) dated May 1, 2019 (the "Underwriting Agreement")

This is further to my correspondence dated October 28, 2019 in which notice was provided to you of indemnification under section 7 of the Underwriting Agreement and to my subsequent letter dated October 29, 2020 providing notice of the Underwriters' requirement that CannTrust, Cannamed and Cajun comply with section 7(d) of the Underwriting Agreement.

We understand that the ongoing court-ordered mediation may result in a proposed settlement between some or all of CannTrust, Cannamed and Cajun and that any such settlement will be submitted for approval by the Ontario Superior Court in the context of the CannTrust CCAA proceeding. The Underwriters trust and expect that any such proposed settlement will, pursuant to section 7(d) of the Underwriting Agreement, include an unconditional release of the Underwriters from all liability arising out of the indemnified class proceedings. If any proposed settlement does not include such a release then we will look forward to you seeking the Underwriters' express written consent in advance of the proposed settlement.

We note further that our clients' claims have not yet been resolved in the CCAA process. At worst, our clients may be determined to have some claims that would be characterized as "equity claims" under the CCAA (though this is denied, and many of the claims – e.g. defence costs – are clearly not "equity claims"; we refer you to our proof of claim filed in these proceedings and maintain the positions set out in it). Even in such worst-case scenario, our clients would have claims that rank *pari passu* with the claims of the plaintiffs. It is not open to the company to selectively prefer, settle and make payment of some subordinated or *pari passu* claims. Any attempt to resolve the plaintiffs' claims without also resolving the claims of our clients is unfounded in insolvency law and will be strenuously contested. That is true even where insolvency law applies – and it is not clear to us given the record to date that the company is, in fact, insolvent. Should CannTrust attempt to prefer the plaintiffs' claims through the CCAA process while leaving the Underwriters' claims unresolved or otherwise affected in a manner less favourable than the claims of the plaintiffs, we require adequate scheduling for any such court or approval process. We would be pleased to attend at a scheduling hearing before the Court to canvass the appropriate steps and timeline for such an endeavor by the company, should you intend to pursue that course of action. We remain hopeful that the company will, instead, fulfil its obligations and seek a satisfactory comprehensive resolution of these claims.

Yours truly,

John A. Fabello

JAF/fc

cc: McCarthy Tétrault LLP, counsel to CannTrust Holdings Inc. and Cajun Capital Corporation
Fasken Martineau DuMoulin LLP, counsel to Cannamed Financial Corporation

THIS IS **EXHIBIT "B"** REFERRED TO IN THE

AFFIDAVIT OF COLETTE KOOPMAN**,**

AFFIRMED REMOTELY BY COLETTE KOOPMAN

BEFORE ME *BY VIDEO CONFERENCE*, THIS 27th

DAY OF JANUARY, 2021.

Michael Noel

Commissioner for Taking Affidavits

From: "Bish, David" <dbish@torys.com>
Date: December 31, 2020 at 3:37:35 PM EST
To: "Gage, James D." <JGAGE@mccarthy.ca>
Cc: "D'Souza, Shane" <sdsouza@mccarthy.ca>
Subject: RE: [EXT] CannTrust - confidential and without prejudice

Thanks, Jamey. As noted, we've just had radio silence of late, so we're not sure what is going on (but if the answer is nothing, then maybe we're not missing anything). I'm attaching a copy of a letter sent by my partner, John Fabello, in mid-December in case you aren't aware of it. As noted in that letter, we would like to address a proper scheduling of any court hearing(s) to advance a settlement that excludes the underwriters and/or does not resolve the claims both of and against the underwriters, as we expect to object. Although we're hopeful the company won't proceed in that manner, we're available as needed to discuss scheduling and/or arrange a scheduling hearing with the court. We should have that discussion before the company fixes a schedule and serves any materials.

Regards.

David Bish

From: Gage, James D. <JGAGE@MCCARTHY.CA>
Sent: Wednesday, December 30, 2020 4:53 PM
To: Bish, David <dbish@torys.com>
Cc: D'Souza, Shane <sdsouza@mccarthy.ca>
Subject: Re: [EXT] CannTrust - confidential and without prejudice

Hi David.

I hope you are having an enjoyable break too.

I don't believe I have an update for you beyond what you already know. As I understand it, your clients and the coalition have been in discussions about a settlement, but no agreement has been reached. As you know, the company is in the process of finalizing the terms of a settlement framework with the coalition and then will seek to implement it by pursuing further steps within its restructuring process. If I recall correctly, you are on the service list so you would get notice if or when the company decides to seek any further relief from the court as part of its CCAA process and, in the meantime, if any further steps are proposed within the mediation context I would imagine that the mediator would involve your clients to the extent he considered it appropriate.

Jamey

On Dec 30, 2020, at 10:00 AM, Bish, David <dbish@torys.com> wrote:

Morning, Jamey. Hope you're doing well and had (might still be having!) great holidays – with the ever-present qualifier "in the circumstances". Do you have 5 minutes to catch-up on CannTrust. We've had radio silence and wanted to connect, find out what's going on / what's ahead. I'm generally flexible any time today other than a call at 10:00 – 10:30. My cell is 647-284-6276.

Regards.

David Bish

P. 416.865.7353 | F. 416.865.7380 | 1.800.505.8679

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THIS IS **EXHIBIT "C"** REFERRED TO IN THE

AFFIDAVIT OF COLETTE KOOPMAN**,**

AFFIRMED REMOTELY BY COLETTE KOOPMAN

BEFORE ME *BY VIDEO CONFERENCE*, THIS 27th

DAY OF JANUARY, 2021.

Michael Noel

Commissioner for Taking Affidavits

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John A. Fabello
jfabello@torys.com
P. 416.865.8228

January 27, 2021

EMAIL

McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300, TD Bank Tower Box 48
Toronto, ON M5K 1E6

Attention: Shane C. D'Souza
(email: sdsouza@mccarthy.ca)

Dear Mr. D'Souza:

Re: Underwriting Agreement among CannTrust Holdings Inc., Cannamed Financial Corporation, Cajun Capital Corporation, Merrill Lynch Pierce Fenner & Smith Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC and RBC Dominion Securities Inc. (as representatives of other named Underwriters) dated May 1, 2019

This is further to my letter dated December 15, 2020 to your clients and copied to you. In that letter I conveyed the Underwriters' position that any proposed settlement arising from the court-ordered mediation within the CannTrust CCAA proceedings should contain an unconditional release of the Underwriters from all liability arising out of the indemnified class proceedings. This is also further to the subsequent email correspondence dated December 31, 2020, between my colleague, David Bish, and Jamey Gage of your firm, inquiring as to the status of those settlement negotiations. We have not received a response to my letter.

As we have consistently communicated, the Underwriters' principled position is that any restructuring plan submitted before the Court for consideration must embody a global resolution of all outstanding claims regarding CannTrust. This includes any and all claims held by, and asserted against, the Underwriters. Having received and reviewed the motion record dated January 20, 2021, returnable January 29, 2021, we are disappointed by your clients' apparent willingness to proceed with a piecemeal resolution of certain claims made against your clients without also resolving the claims of and against the Underwriters. We remain hopeful that your clients will ultimately elect not to proceed in this manner.

In the circumstances, the Underwriters do not intend to object to the limited relief being sought on the pending motion, on the understanding that none of the relief sought prejudices any position or defence the Underwriters may assert in the class action proceedings. However, we wish to reiterate that our clients intend to object to any eventual Plan in the CCAA proceedings that does not include a resolution of the claims of and against the Underwriters. Our clients' intention not to object to the limited relief being sought on January 29, 2021 is without prejudice to their right to object to an eventual CCAA Plan which incorporates the Restructuring Support

Agreement appended at tab 2G of the January 20, 2021 motion record and that is not satisfactory to the Underwriters. The Underwriters have many concerns with respect to the Restructuring Support Agreement but will reserve comment until that agreement and a related plan are before the Court and explained in further motion materials.

We are concerned that the company has seemingly left it to the Underwriters and the Coalition to negotiate independently. We again urge your clients to assume responsibility for facilitating a resolution of these issues and to acknowledge that they have a significant role to play in this regard. Our clients remain committed to engaging in good faith discussions with you and the other parties involved in this matter.

Yours truly,

John A. Fabello

JAF:fc

cc: J. Gage (email: jgage@mccarthy.ca)

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