

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.

Applicants

FACTUM OF THE APPLICANTS
(DIP Approval Order)
(Returnable April 30, 2021)

April 29, 2021

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PART I—INTRODUCTION

1. The CannTrust Group has made significant progress in its restructuring efforts since commencing these proceedings (the “**CCAA Proceedings**”) under the *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”) on March 31, 2020.¹ The CannTrust Group remediated its facilities, obtained the reinstatement of its cannabis licences, resumed production and processing operations, returned to the recreational and medical cannabis markets and agreed to a framework for the settlement of over \$500 million in Securities Claims that have been asserted against it in the Actions, while preserving the ability of other defendants to benefit from that framework.²

2. On April 16, 2021, CannTrust Holdings Inc., CannTrust Inc. and Elmclyffe Investments Inc. (the “**CannTrust Plan Companies**”) filed a plan of compromise,

¹ Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Greg Guyatt, sworn April 19, 2021 (“**Guyatt Affidavit**”), Motion Record of the Applicants (DIP Approval Order) dated April 19, 2021 (“**Motion Record**”), Tab 2.

² Guyatt Affidavit at para. 5, Motion Record, Tab 2.

arrangement and reorganization (the “**CCAA Plan**”) and obtained an order authorizing them to conduct meetings of their creditors (the “**Meetings**”) to vote on the CCAA Plan (the “**Meeting Order**”).³ The CCAA Plan, among other things, implements the framework for the settlement of the Securities Claims against the CannTrust Group.

3. The Meetings have been scheduled for May 28, 2021. If the CCAA Plan is approved by the majorities of creditors contemplated by the Meeting Order, the CannTrust Plan Companies will seek court sanction of the CCAA Plan on June 11, 2021.⁴

4. In order to implement the CCAA Plan, the CannTrust Plan Companies will need at least \$51.8 million to fund the distributions and payments contemplated by the CCAA Plan. While the CannTrust Group has made significant progress on its journey to turning around its business, it remains cash flow negative and is only expected to have cash of approximately \$51.2 million as at July 4, 2021, of which \$50 million is payable to the Securities Claimant Trust if the CCAA Plan is approved.⁵ The CannTrust Plan Companies cannot continue to operate and implement the CCAA Plan without further financing.

5. The CannTrust Group brings this motion to approve a \$22.5 million interim financing and exit credit facility (the “**DIP and Exit Loan**”) to be provided by Cortland Credit Lending Corporation in its capacity as administrative agent (the “**Agent**”) on behalf of itself, its affiliates and/or other lenders to be designated from time to time (collectively, the “**DIP Lender**”) pursuant to a term sheet between the CannTrust Group and the Agent dated April

³ Guyatt Affidavit at para. 6, Motion Record, Tab 2.

⁴ Guyatt Affidavit at para. 7, Motion Record, Tab 2.

⁵ Ninth Report of the Monitor dated April 22, 2021 at para. 18 (“**Ninth Report**”).

13, 2021 (the “**DIP Term Sheet**”).⁶

6. The DIP and Exit Loan will allow the CannTrust Group to continue its operations during the CCAA Proceedings, ensure it remains able to implement the CCAA Plan and provide it with working capital necessary to continue operating upon its exit from the CCAA Proceedings.

7. The CannTrust Group has provided notice of this motion to all parties that may be affected by the order sought. The only stakeholders that have indicated that they may oppose this motion are Mark Litwin and Stanley Abramowitz (the “**Litwin Defendants**”), a former Board member and corporate secretary of CannTrust Holdings Inc., respectively, who, until their recent resignation, actively supported and facilitated the efforts by the CannTrust Group to seek the DIP and Exit Loan. They oppose this motion in furtherance of their apparent objective to halt the progress of these CCAA Proceedings by any means necessary to create leverage in their settlement negotiations with the CCAA Representatives.

8. For the reasons set out herein, it is necessary and appropriate to approve the DIP and Exit Loan and extend the Stay Period to June 30, 2021, so that the CannTrust Group can advance these CCAA Proceedings and continue to operate with the certainty that it will still have the necessary liquidity to implement the CCAA Plan, should it be approved by creditors and the Court, and emerge from the CCAA Proceedings as a going concern for the benefit of its 298 employees, the consumers and medical patients that rely on its products, its suppliers and the communities in which it operates.⁷

⁶ Exhibit “B” to the Guyatt Affidavit, Motion Record, Tab 2B.

⁷ Guyatt Affidavit at para. 12, Motion Record, Tab 2.

PART II—THE FACTS

(i) The Need for Additional Financing

9. The CannTrust Group, with the assistance of its chief restructuring officer FTI Consulting Canada Inc. (the “**CRO**”), and in consultation with the Monitor, prepared a cash flow forecast (the “**Cash Flow Forecast**”) running from April 19, 2021 to July 4, 2021 (the “**Forecast Period**”).⁸ The Cash Flow Forecast indicates that:

- (a) the CannTrust Group held cash and short-term investments of approximately \$63.7 million as at April 19, 2021;
- (b) the CannTrust Group is projected to hold cash and short-term investments of approximately \$51.2 million as at July 4, 2021, representing a net cash outflow over the Forecast Period of approximately \$12.5 million; and
- (c) the CannTrust Group is projected to have receipts of approximately \$1.98 million over the Forecast Period, compared with operational disbursements of approximately \$13.21 million over the Forecast Period.⁹

10. The CCAA Plan currently contemplates that the CannTrust Plan Companies will need to fund the following amounts, among others:

- (a) a cash contribution of \$50 million to settle the Securities Claims;
- (b) a contribution of \$900,000 to fund distributions to general unsecured creditors of CannTrust Inc.;

⁸ Ninth Report at para. 39.

⁹ Ninth Report at para. 40 and Appendix “A”.

- (c) payment of secured claims against the CannTrust Plan Companies (as at April 7, 2021, there were proven secured claims against the CannTrust Plan Companies in the amount of \$101,439);
- (d) payment of CCAA Priority Payment Claims (as defined in the CCAA Plan), in an amount to be determined; and
- (e) payment of all claims secured by the CCAA Charges (as defined in the CCAA Plan) other than the DIP and Exit Loan, in an amount to be determined.¹⁰

11. The Monitor has estimated that after taking into account these amounts that are required to be funded under the CCAA Plan, the CannTrust Group would have a negative cash balance of \$597,755 as at July 4, 2021.¹¹ In addition, the CannTrust Group would require additional funds to operate after July 4, 2021 until it is in a position to implement the CCAA Plan. Accordingly, the CannTrust Group requires additional financing during the CCAA Proceedings to allow it to continue to operate while still preserving its ability to implement the CCAA Plan, should it be approved by creditors and the Court, and emerge from these proceedings as a going concern with the necessary working capital.¹²

(ii) Market Solicitation

12. The CannTrust Group engaged in a broad and robust market solicitation effort with the assistance of the Monitor, the CRO and the Financial Advisor.¹³ The Litwin Defendants were fully supportive of this initiative. The CannTrust Group contacted over 20 parties to solicit

¹⁰ Guyatt Affidavit at para. 18, Motion Record, Tab 2; Ninth Report at para. 21.

¹¹ Ninth Report at para. 22.

¹² Guyatt Affidavit at para. 19, Motion Record, Tab 2.

¹³ Guyatt Affidavit at paras. 20-21, Motion Record, Tab 2.

interest in advancing financing.¹⁴ Seven parties submitted proposals for consideration.¹⁵ The CannTrust engaged in negotiations with the potential lenders with the strongest proposals and selected the DIP Lender's proposal as the proposal best-suited to the company's needs in the immediate and longer term based on, among other things, (i) the maximum principal amount of the loan available, (ii) the exit financing structure, and (iii) the fees, costs and various terms relative to the other term sheets received.¹⁶

(iii) DIP Term Sheet

13. The CannTrust Group engaged in extensive negotiations with the Agent to finalize the terms of the DIP Term Sheet.¹⁷ The material terms of the DIP Term Sheet are set out in the Affidavit of Greg Guyatt, sworn April 19, 2021 (the "**Guyatt Affidavit**") and in the Ninth Report of the Monitor dated April 22, 2021.¹⁸

14. The terms of the DIP Term Sheet were negotiated with the assistance of the Monitor and the CRO. The CannTrust Group believes that the terms of the DIP Term Sheet are reasonable and represent the best financing terms available to the CannTrust Group in the circumstances.¹⁹ This view is shared by the Monitor, which was involved in the solicitation

¹⁴ Guyatt Affidavit at para. 21, Motion Record, Tab 2.

¹⁵ Guyatt Affidavit at para. 21, Motion Record, Tab 2.

¹⁶ Guyatt Affidavit at para. 22; Ninth Report at para. 23.

¹⁷ Guyatt Affidavit at para. 22, Motion Record, Tab 2. In the CCAA proceedings of King Street Company Inc. and Laurentian University of Sudbury, DIP loans were recently approved by this Court which permitted the agent and the lenders to assign their obligations under the applicable loan agreement without the consent of the borrower: [DIP Term Sheet dated November 6, 2020, paras. 2 and 19, Exhibit "K" to the Affidavit of Peter Tsebelis sworn November 6, 2020, Application Record of King Street Company Inc. \(CCAA Application\) dated November 6, 2020](#), pp. 733 and 748 of the pdf; [DIP Term Sheet between Firm Capital Corporation and Laurentian University dated January 29, 2021 at para. 6, Exhibit "HHH" to the Affidavit of Dr. Robert Haché sworn January 30, 2021, Application Record of Laurentian University of Sudbury dated January 30, 2021, Volume 4](#), p. 1464.

¹⁸ Guyatt Affidavit at paras. 24-26, Motion Record, Tab 2; Ninth Report at paras. 27-29.

¹⁹ Guyatt Affidavit at para. 33, Motion Record, Tab 2.

and negotiation efforts outlined above and has extensive experience in recent cannabis insolvencies.²⁰

15. The DIP and Exit Loan is conditional upon, among other things, issuance of a court order approving the DIP and Exit Loan and granting the DIP Lender's Charge over all present and after-acquired property, assets, and undertakings of the CannTrust Group other than certain Excluded Property.²¹ The CannTrust Group provided notice of this motion to creditors who may be affected by the DIP Lender's Charge.²²

PART III—ISSUES AND THE LAW

16. The issues on this motion are:

- (a) Should the Court approve the DIP and Exit Loan and grant the DIP Lender's Charge? *Yes.*
- (b) Should the Court seal the unredacted version of the DIP Term Sheet? *Yes.*
- (c) Should the Court extend the Stay Period until June 30, 2021? *Yes.*

(i) The Court Should Approve the DIP and Exit Loan and the DIP Lender's Charge

17. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP and Exit Loan and the DIP Lender's Charge.²³ Section 11.2(2) further

²⁰ Ninth Report at paras. 49-50.

²¹ Guyatt Affidavit at para. 27, Motion Record, Tab 2.

²² Guyatt Affidavit at paras. 30-31, Motion Record, Tab 2.

²³ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, s. 11.2(1) ("CCAA").

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.²⁴

18. 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;
- (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.²⁵

19. The CannTrust Group's objective is to put in place arrangements available to it now that, in the Board's reasonable business judgment exercised in consultation with the CRO and the Monitor, ensure that it is able to fund the settlement of over \$500 million in Securities

²⁴ CCAA, s. 11.2(2).

²⁵ CCAA, s. 11.2(4).

Claims asserted against it as well as fund its ongoing operations during these CCAA Proceedings and, subject to meeting the conditions set out in the DIP Term Sheet, upon exit.

20. If the CannTrust Group does not obtain additional financing at this stage, in order to continue its operations it would need to spend a portion of its remaining cash that is necessary to implement the CCAA Plan. That would make the settlement of the Securities Claims, as well as its ongoing operations, conditional on obtaining exit financing. There is no assurance that exit financing will be available in such circumstances.

21. Obtaining additional financing now ensures that the settlement of the Securities Claims can proceed, with or without exit financing, and in the meantime: (i) the CannTrust Group can continue its operations without putting the settlement of the Securities Claims at risk; and (ii) the CannTrust Group has reduced execution risk in relation to exit financing because it has a commitment for such financing from the DIP Lender, subject to certain conditions precedent.

22. The criteria set out in subsections 11.2(1) and 11.2(4) of the CCAA militate in favour of approval of the DIP and Exit Loan and the DIP Lender's Charge:

- (a) the Court may approve DIP financing and a DIP charge to secure financing that may continue after the company emerges from CCAA protection where such financing enhances the prospects of a plan of compromise or arrangement that will lead to the continuation of the company after plan approval;²⁶

²⁶ [*Crystallex \(Re\)*, 2012 ONCA 404](#) at paras. 66-72 [*Crystallex ONCA*]; [*Air Canada \(Re\)*, 2004 CanLII 11700](#) (ON SC) at paras. 10, 15.

- (b) the DIP and Exit Loan is necessary in order for the CannTrust Group to maintain the ability to implement the CCAA Plan and emerge from the CCAA Proceedings as a going concern;
- (c) the terms of the DIP and Exit Loan are commercially reasonable and better than the terms offered by other potential financiers that the CannTrust Group engaged with;²⁷
- (d) the CannTrust Group's management has the confidence of the CCAA Representatives, which represent the Securities Claimants which are by far the CannTrust Group's largest creditor group;
- (e) the CannTrust Group provided notice of this motion to creditors who may be affected by the DIP Lender's Charge;²⁸
- (f) the CannTrust Group has only been contacted by one secured creditor with respect to the DIP Lender's Charge and the CannTrust Group and the Agent have agreed that the DIP Lender's Charge will be subordinated to this secured creditor's interest; and
- (g) the Monitor supports the approval of the DIP and Exit Loan and the granting of the DIP Lender's Charge.²⁹

²⁷ Guyatt Affidavit at para. 12, Motion Record, Tab 2.

²⁸ Guyatt Affidavit at paras. 30-31, Motion Record, Tab 2.

²⁹ Ninth Report at paras. 49-50.

23. Accordingly, the DIP and Exit Loan and the DIP Lender's Charge should be approved by this Court.

(ii) *The Unredacted DIP Term Sheet Should be Sealed*

24. The CannTrust Group seeks a sealing order with respect to the unredacted DIP Term Sheet that is attached as Confidential Exhibit "C" to the Guyatt Affidavit.

25. Subsection 137(2) of the *Courts of Justice Act* provides this Court with the statutory jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.³⁰ A sealing order may be granted where:

- (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternatives measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.³¹

26. Certain sensitive financial and economic terms have been redacted from the DIP Term Sheet at the request of the Agent, such as the interest rate, the amounts of the various fees, financial covenant thresholds and the borrowing base calculation methodology.³² Disclosure

³⁰ *Courts of Justice Act*, RSO 1990, c. C.43, s. 137(2).

³¹ [*Sierra Club of Canada v. Canada \(Minister of Finance\)*, 2002 SCC 41](#) at para. 53; [*Laurentian University of Sudbury*, 2021 ONSC 659](#) at para. 61.

³² Guyatt Affidavit at para. 32; Ninth Report at para. 32.

of these terms has the potential to prejudice the ability of the CannTrust Group and the DIP Lender to negotiate in connection with future lending opportunities.³³

27. The purpose of the DIP and Exit Loan is both to provide financing during the pendency of the CCAA Proceedings and upon exit, when these terms would normally be confidential as between the parties.³⁴ It is appropriate to seal commercially sensitive information where no party would be prejudiced by the proposed sealing and the information would ordinarily be treated as confidential outside of a CCAA proceeding.³⁵

28. The fact that CannTrust Holdings is a reporting issuer under provincial securities legislation does not change this outcome for three reasons.

29. First, this Court has authorized the decision by CannTrust Holdings to incur no further expenses in relation to securities filings during the CCAA Proceedings.³⁶

30. Second, in the CCAA proceedings of *Lydian* and *Crystallex*, which involved debtor companies that were reporting issuers at the time they commenced those proceedings, this Court ordered the sealing of certain terms of DIP loans, including the borrowing limit, cash

³³ Guyatt Affidavit at para. 32; Ninth Report at para. 33.

³⁴ Guyatt Affidavit at para. 32; Ninth Report at para. 33. For example, in the CCAA proceedings of Terrace Bay Pulp Inc., U. S. Steel Canada Inc. and AgMedica Bioscience Inc., the terms of exit facilities were not fully disclosed to the Court and stakeholders upon the debtor company's exit from the CCAA proceedings. See [Affidavit of Russell York, sworn July 20, 2010 at paras. 17-18](#), [Motion Record of Terrace Bay Pulp Inc. dated July 20, 2010, Tab 2, pp. 69-70](#); [Affidavit of William E. Aziz, sworn June 6, 2017 at para. 86\(1\)](#), [Motion Record of the Applicant, U. S. Steel Canada Inc. \(Sanction Order and Second Amended Plan Order\) dated June 7, 2017, Tab 2, p. 45](#); [Affidavit of Trevor Henry, sworn September 8, 2020 at para. 18\(b\)](#), [Motion Record of AgMedica Bioscience Inc. et al. \(Plan Sanction Order & Stay Extension\) dated September 8, 2020, Tab 2, p. 27](#).

³⁵ [JTI-Macdonald Corp., Re](#), 2019 ONSC 1625 at para. 29.

³⁶ Amended and Restated Initial Order dated April 9, 2020 at paras. 63-64, Exhibit "D" to the Guyatt Affidavit, Motion Record, Tab 2D, pp. 152-153.

flow forecast, maturity date, certain covenants and certain events of default.³⁷ In each of these cases, the DIP loans subject to the sealing order were expected to be utilized during the pendency of the CCAA proceedings and afterwards.³⁸

31. Third, there is precedent for a reporting issuer in the cannabis industry not subject to CCAA proceedings redacting certain sensitive commercial terms from its lending agreement before disclosing it to the public, including terms related to the interest rate, financial covenant thresholds, borrowing base and margin, minimum and incremental drawdown amounts and the repayment schedule.³⁹

32. The unredacted DIP Term Sheet has been disclosed to the Litwin Defendants, they have cross-examined the CannTrust Group's affiant on it, and they will have the full ability to make submissions with respect to the DIP Term Sheet at the hearing of this motion. The CannTrust Group is not aware of any other objection to the sealing order sought, nor has any other party requested production of the unredacted DIP Term Sheet. The Monitor supports the CannTrust Group's request to seal the unredacted DIP Term Sheet.⁴⁰

³⁷ [*Lydian International Limited \(Re\)*, 2020 ONSC 1586](#) at paras. 38-39; [*Lydian International Corporation, Re*, Court File No. CV-19-00633392-00CL, Order \(Re Approval of BMO Engagement, DIP Agreement and Extension of the Stay of Proceedings\) dated March 11, 2020](#) at para. 18; [*Redacted DIP Agreement, Confidential Exhibit "K" to the Affidavit of Edward Sellers, sworn March 10, 2020, Motion Record \(Re: Approval of BMO Engagement, DIP Agreement, Stay Extension\)*, dated March 10, 2020, Tab 2K](#), pp. 206, 207, 208 and 209-210 of pdf; [*Crystallex International Corporation, Re*, Court File No. CV-11-9532-00CL, CCAA Financing Order dated April 16, 2012](#) at paras. 25-28; [*Commitment Letter dated March 30, 2012 between Tenor Special Situations Fund I, LLC and Crystallex International Corporation*, Exhibit "1" to the Affidavit of Robert Fung sworn March 21, 2012, Supplementary Motion Record of Crystallex International Corporation \(DIP Financing Motion\), dated March 21, 2012, pp. 20, 43, 47-48, 52, 56-57, 58 and 60.](#)

³⁸ [*Lydian International Limited \(Re\)*, 2020 ONSC 4006](#) at paras. 65-70; [*Re Crystallex International Corporation, 2012 ONSC 2125*](#) at paras. 61-62, aff'd [*Crystallex ONCA*](#) at paras. 66-72.

³⁹ Credit Agreement between Valens Growworks Corp. and others, made as of May 29, 2020, which was filed by Valens Growworks Corp. on SEDAR on June 11, 2020 and can be accessed here: <https://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00025584>.

⁴⁰ Ninth Report at para. 33.

33. Accordingly, the salutary effects of sealing the unredacted DIP Term Sheet outweigh any conceivable deleterious effects. It is appropriate for the unredacted DIP Term Sheet to be sealed by this Court.

(iii) *The Court Should Grant the Stay Extension*

34. Section 11.02(2) of the CCAA gives the court the discretion to grant or extend a stay of proceedings, “for any period that the court considers necessary.”⁴¹ Pursuant to section 11.02(3) of the CCAA, to exercise its discretion to extend the stay of proceedings, the court must be satisfied that (i) circumstances exist that make the order appropriate and (ii) the applicant has acted, and is acting, in good faith and with due diligence during the CCAA Proceedings.⁴² The court will also consider, among other factors, whether the debtor company has sufficient available cash resources during the extension of the stay period, and whether the Monitor supports the requested stay extension.⁴³

35. The requested extension of the Stay Period is necessary and appropriate and will further the purpose of the CCAA, as it will, among other things, allow the CannTrust Group to: (i) conduct the creditor meetings on May 28, 2021; (ii) seek court approval of the CCAA Plan at the Sanction Hearing on June 11, 2021 if it is approved by the majorities contemplated by the Meeting Order at the Meetings; (iii) continue to advance the Claims Procedure; and (iv) works towards the satisfaction of the Plan Implementation Conditions.⁴⁴

⁴¹ *Companies Creditor’s Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.02(2).

⁴² [*U.S. Steel Canada Inc., Re*, 2016 ONSC 3106](#) at para. 2; [*Worldspan Marine Inc. \(Re\)*, 2011 BCSC 1758](#) at paras. 12-15.

⁴³ [*Canwest Global Communications Corp. \(Re.\)*, 2009 CarswellOnt 7169](#) at para. 43 (SCJ).

⁴⁴ Guyatt Affidavit at para. 38; Ninth Report at para. 44.

36. The CannTrust Group believes that an extension of the Stay Period until June 30, 2021 is necessary and appropriate to allow it an opportunity to complete, or make substantial progress towards, each of these objectives.⁴⁵

37. The CannTrust Group has acted, and continues to act, in good faith and with due diligence.⁴⁶ The CannTrust Group is expected to have sufficient liquidity to operate throughout the proposed stay extension period.⁴⁷ The Monitor supports the proposed stay extension.⁴⁸

38. Accordingly, it is appropriate for the Court to extend the Stay Period to June 30, 2021.

PART IV—ORDER REQUESTED

39. For the reasons set out above, the CannTrust Group requests that this Court grant the order sought. The requested relief is in the best interests of the CannTrust Group and its stakeholders, is appropriate in the circumstances and should be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of April, 2021.



McCarthy Tétrault LLP

Lawyers for the Applicants

⁴⁵ Guyatt Affidavit at para. 39, Motion Record, Tab 2.

⁴⁶ Guyatt Affidavit, para. 37, Motion Record, Tab 2; Ninth Report at para. 44.

⁴⁷ Guyatt Affidavit, para. 84, Motion Record, Tab 2; Ninth Report at para. 45.

⁴⁸ Ninth Report at para. 46.

SCHEDULE “A”
LIST OF AUTHORITIES

1. [*Crystallex \(Re\)*, 2012 ONCA 404](#)
2. [*Air Canada \(Re\)*, 2004 CanLII 11700 \(ON SC\)](#)
3. [*Sierra Club of Canada v. Canada \(Minister of Finance\)*, 2002 SCC 41](#)
4. [*Laurentian University of Sudbury*, 2021 ONSC 659](#)
5. [*JTI-Macdonald Corp., Re*, 2019 ONSC 1625](#)
6. [*Lydian International Limited \(Re\)*, 2020 ONSC 1586](#)
7. [*Lydian International Limited \(Re\)*, 2020 ONSC 4006](#)
8. [*Re Crystallex International Corporation*, 2012 ONSC 2125](#)
9. [*U.S. Steel Canada Inc., Re*, 2016 ONSC 3106](#)
10. [*Worldspan Marine Inc. \(Re\)*, 2011 BCSC 1758](#)
11. [*Canwest Global Communications Corp. \(Re.\)*, 2009 CarswellOnt 7169](#)

SCHEDULE “B” RELEVANT STATUTES

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

s. 11.02(2) and (3)

Stays, etc. — other than initial application – 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 – 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.

s. 11.2(1), (2) and (4)

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.

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.

Factors to be considered – 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.

Courts of Justice Act, RSO 1990, c. C.43, as amended

s. 137(2)

Sealing documents – A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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