

**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

**SUPPLEMENTARY MOTION RECORD
OF THE CCAA REPRESENTATIVES
(Sanction Hearing)
(Returnable June 17, 2021)**

June 16, 2021

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To: The Service List

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AFFIDAVIT OF SERGE KALLOGHLIAN

(Affirmed June 16, 2021)

I, SERGE KALLOGHLIAN, of the City of Toronto, in the Province of Ontario,

AFFIRM:

1. I am a partner at Kalloghlian Myers LLP, co-counsel to Patrick Hrusa and Dharambir Singh (“**CCAA Canadian Representatives**”), in these proceedings, and in the proposed class action against CannTrust Holdings Inc. (“**CannTrust Holdings**”) and others bearing (Toronto) Court File No. 19-000625181-00CP in the Ontario Superior Court of Justice (“**Ontario Class Action**”).

2. I affirmed an affidavit dated June 2, 2021 (“**First Affidavit**”) in support of the Applicants’ motion for an order approving the plan of compromise, arrangement and reorganization of CannTrust Holdings, CannTrust Inc. and Elmcliff Investments Inc. under the *Companies’*

Creditors Arrangement Act (the “**CCAA**”) dated April 16, 2021 (as amended from time to time) (“**CCAA Plan**”) in these proceedings (the “**CCAA Proceedings**”). Unless otherwise defined, capitalized terms in this affidavit have the meanings ascribed to them in the First Affidavit or, if not defined in the First Affidavit, in the CCAA Plan.

3. Following the commencement of the hearing of the Applicants’ motion for a sanction order on June 11, 2021, the CCAA Representatives reached settlements in principle with: (i) Peter Aceto, CannTrust Holdings’ former chief executive officer; and (ii) the Insurers, which provided policies of insurance to CannTrust Holdings and its directors and officers. The CCAA Representatives also intend to enter an agreement with Ian Abramowitz to supplement the Additional RSA described in the First Affidavit. I make this affidavit to provide further information to the Court on these settlements.

4. The parties are still in the process of negotiating final documentation in respect of these settlements and do not anticipate that the documentation will be finalized and executed prior to the issuance of the CCAA Sanction Order.

A. Aceto Settlement

5. Peter Aceto is the former chief executive officer of CannTrust Holdings. Peter Aceto faces both Secondary Market Claims and Prospectus Claims.

6. The CCAA Representatives, Peter Aceto, and the CannTrust Group have reached an agreement in principle (the “**Aceto Settlement**”), to be memorialized in an Additional RSA, pursuant to which, among other things: (i) Peter Aceto will provide cooperation to the plaintiffs

in the continuing litigation; (ii) Peter Aceto will support the CCAA Plan in a manner consistent with the RSA; and (iii) Peter Aceto will provide a release of all claims against the Insurers.

7. CCAA Representative Counsel believe the claims against Peter Aceto are strong. The settlement with Mr. Aceto was driven primarily by the effect of his settlement on the negotiation with the Insurers, his ability to make a meaningful monetary contribution, and the value of his cooperation in the litigation against KPMG.

8. Because Aceto is releasing his rights to insurance coverage that would respond to regulatory or criminal proceedings, the Securities Claimant Trust will reserve \$1 million in respect of legal costs to defend against any such proceedings. Any such funds remaining after the final disposition of such proceedings would revert back to the Securities Claimant Trust.

9. For the reasons set out above, CCAA Representative Counsel believe that the Aceto Settlement is fair and reasonable in the circumstances.

B. Insurers Settlement

10. As indicated in previous affidavits filed in these proceedings, CannTrust Holdings' Insurer has denied it coverage and certain of the Insurers have denied coverage to some of the directors and officers.

11. The negotiations with the Insurers were extremely complex, involving multiple layers of Insurers with differing positions and interests. Because of the Insurers' denial of coverage, CCAA Representative Counsel considered not only the strength of the claims against the various

insured defendants, but also the positions and arguments of the Insurers in respect of their liability under the policies.

12. The CCAA Representatives, the Insurers, and the CannTrust Group have reached an agreement in principle (the “**Insurer Settlement**”), to be memorialized in an Additional RSA, pursuant to which the Insurers will collectively pay approximately USD \$36,900,000 to the Securities Claimant Trust in exchange for, among other things, full policy releases from all insureds.

13. For the reasons set out above, CCAA Representative Counsel believe that the Insurer Settlement is fair and reasonable in the circumstances.

C. Supplement to Abramowitz Settlement

14. As detailed in the First Affidavit, pursuant to the Abramowitz Settlement, Ian Abramowitz agreed to assign to the Securities Claimant Trust any Assigned Claims that he may have against Insurers except rights to coverage for criminal, regulatory, or administrative proceedings.

15. In order to provide the Insurers with the full policy releases they require under the Insurer Settlement, CCAA Representative Counsel determined that it is necessary and appropriate to enter into an agreement (the “**Abramowitz Settlement Supplement**”), to be memorialized in a supplemental Additional RSA, that supplements the Abramowitz Settlement to indemnify Mr. Abramowitz in respect of costs for criminal, regulatory, administrative and/or other costs.

16. For the reasons set out above, CCAA Representative Counsel believe that the Abramowitz Settlement Supplement is fair and reasonable in the circumstances.

AFFIRMED BEFORE ME over video-
teleconference in accordance with Ontario
Regulation 431/20, this 16th day of June, 2021.

JS Smith

A Commissioner for taking Affidavits (*or as may
be*)

LSO 75275W
JUSTIN SMITH

SK

Serge Kalloghlian

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Court File No. CV-20-00638930-0CL

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Proceeding commenced at Toronto

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