ENDORSEMENT

[1] The applicant Mallinckrodt Canada ULC brings this motion as the foreign representative of itself and other Canadian filing affiliates for a) an order recognizing, and giving full force and effect in Canada to, the Confirmation Order and the Confirmed Plan (both as defined in its factum), which have been granted and approved, respectively, by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") under Part IV, s. 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"); and b) an order approving the termination of the recognition proceedings, including lifting the third party stay and releasing the Information Officer and its counsel, approving the activities of the Information Officer, and approving the fees of the Information Officer and its counsel.

[2] For the reasons that follow, I find that the requested orders should issue. There is no opposition to the relief sought.

Background Facts

[3] In this matter, this court granted recognition orders on October 16, 2020, and since then has granted other orders on various motions brought in this court. The primary Canadian liabilities arise from a class action in British Columbia, which has not yet been certified; an action in Ontario in negligence, conversion, and breach of contract in respect of destruction of certain product stock; and another class action brought under the *Competition Act* (Canada) and the *Federal Courts Act* regarding price fixing and maintaining the supply of certain generic drugs.

[4] The Bankruptcy Court found that the Confirmed Plan meets all requirements for approval under the Bankruptcy Code, that it was proposed in good faith, complies with all applicable provisions of the Bankruptcy Code, is in the best interests of the Debtors' creditors and is not likely to be followed by further reorganization or liquidation. The confirmation hearing spanned 17 days.

[5] The Confirmation Order has been appealed by certain of the Debtors' creditors but has not been stayed under U.S. law.

[6] The Confirmed Plan specifically provides for separate claims and interests, and each receives unique treatment. The Canadian claims fall into the classes of "PI Opioid Claims", "Other Opioid Claims", "Other General Secured Claims" and "Generics Price Fixing Claims" and are treated accordingly. The Confirmed Plan provides that all Opioid Claims will be channeled to various opioid trusts and resolved in accordance with the terms of those trusts. The trust documents were approved under the Confirmation Order. A master distribution trust will receive consideration of approximately US$1.725 billion in initial and deferred cash payments and warrants to acquire shares in the reorganized Debtors' parent company. Opioid claimants will have an opportunity to prove their claims, and if allowed, to have their claims liquidated and receive a distribution from the applicable trust.

[7] The distributions, rights and treatments that are provided in the Confirmed Plan are in full and final satisfaction, settlement, release, and discharge, effective as of the effective date, of all claims, demands and interests against the Debtors or any of their assets or properties. The Confirmed Plan contains various releases, injunctions, and exculpations in favour of the Debtors. There are two releases: the Non-Opioid Release and the Opioid Release, each of which carves out any claim arising out of, or related to, any act or omission of a released party that is determined by the Bankruptcy Court or any other court of competent jurisdiction to have constituted actual fraud, gross negligence, or willful misconduct.

[8] The Confirmed Plan was accepted by over 88 per cent of the creditors by value, and the majority of voting classes voted in its favour. The Bankruptcy Court noted that over 250,000 holders of opioid claims voted "overwhelmingly, and nearly unanimously" to approve the Confirmed Plan, with roughly 97 per cent aggregate approval, while the rejecting opioid creditor class had fewer than 1,000 class members.

Law

[9] The purpose of Part IV of the *CCAA* is to effect cross-border insolvencies and to create a system under which foreign insolvency proceedings can be recognized in Canada. Such orders are intended to promote fair and efficient administration of cross-border insolvencies, which protect the interests of debtors, creditors, and other interested persons: *Zochem Inc. (Re)*, 2016 ONSC 958, at para. 15. Part IV of the *CCAA* allows this court to make any order, on terms and conditions it considers appropriate, for the protection of a debtor company's property or that is in the interest of a creditor or creditors.

[10] When considering recognition of a foreign order, a Canadian court should consider: a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; b) the need to accord respect to foreign bankruptcy and insolvency legislation unless it diverges radically from the processes in Canada; c) whether stakeholders will be treated equitably regardless of the jurisdiction in which they reside; and d) the importance of allowing the enterprise to reorganize globally, including allowing one jurisdiction to lead the principal administration of the enterprise's reorganization: *Babcock & Wilcox Canada Ltd., Re*, 18 CBR (4th) 157 (Ont Sup Ct J), at para. 21; *Re Xerium Technologies Inc*., 2010 ONSC 3974, at paras. 26-27.

Analysis

The Recognition Order

[11] I am satisfied that the test in *Xerium* has been met in this case. Recognition of the Confirmation Order is consistent with the *CCAA* and the case law governing recognition in Ontario and is an important step in the Debtors' restructuring in the Chapter 11 cases. I am satisfied that the Confirmed Plan is the result of good faith, arms' length negotiations involving thousands of creditors and was supported by the Official Committee of Opioid Related Claimants (the "OCC"), the fiduciary appointed by the Office of the United States Trustee, to advocate for and to protect the interests of all Opioid Claimants, public and private, as well as the Official Committee of Unsecured Creditors (the "UCC"), appointed to represent general unsecured creditors.

[12] The OCC supports the recognition of the Confirmation Order, and it submits that through its efforts to a) increase the overall distribution available to Opioid Claimants and b) resolve allocation issues within the Opioid Claimant groups, the OCC has worked hard to achieve a resolution that it could recommend to Opioid Claimants, taking into account, among other things, the urgent need to make distributions to Opioid Claimants to meet their immediate needs as a result of the opioid epidemic and to compensate victims as soon as possible. The OCC submits that the Confirmed Plan represents a reasonable resolution of Opioid Claims and that its constituents, including those located in Canada, are treated fairly under the Confirmed Plan. The Confirmed Plan includes significant benefits flowing from settlements that were negotiated with the OCC and UCC to the direct benefit of the Canadian creditors.

[13] In seeking confirmation of the Confirmed Plan, the Debtors relied on the "cramdown" provisions of the Bankruptcy Code, which allow a U.S. court to confirm a plan of reorganization over the objections of a dissenting class under certain circumstances. Sections 49 and 50 of the *CCAA* permit Canadian courts to recognize foreign orders confirming plans that comply with the laws of the foreign jurisdiction even if those laws differ from local law.

[14] The Confirmation Order expressly stated that the Confirmed Plan's releases are fair, equitable and reasonable; in the best interests of the Debtors and all Holders of Claims; and in the case of the Opioid Release, are supported by significant contributions and concessions by or on behalf of the beneficiaries thereof. The scope of the Confirmed Plan's releases is consistent with section 5.1(2) of the *CCAA*, which prohibits a domestic plan of arrangement from releasing claims based on allegations of misrepresentations made by directors or creditors or of wrongful or oppressive conduct by the directors. Each of the releases in the Confirmed Plan carves out claims relating to any act or omission found to constitute actual fraud, gross negligence, or willful misconduct. I am satisfied that the test for the granting of third-party release in the context of a *CCAA* plan, as set out by the Court of Appeal for Ontario in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*., 2008 ONCA 587, at para. 113, leave to appeal to SCC refused, has been met in this case.

[15] I am also satisfied that this court should recognize the Confirmation Order notwithstanding the pending appeals of the Order in the U.S. courts. The Bankruptcy Court has already dismissed the motions of two creditors to stay the Confirmation Order pending their respective appeals. In the absence of a stay pending appeal, the Debtors plan to implement the Confirmed Plan later this month or early May.

[16] The existence of an outstanding appeal in the foreign jurisdiction does not preclude recognition of an Order in Canada pending the determination of that appeal: *Arrowmaster Incorporated v. Unique Forming Limited and Antonio Sabato*, [1993] 17 OR (3d) 407, at para. 13; *HSBC Bank USA v. Subramanian*, 2006 CanLII 42661 (Ont Sup Ct J), at para. 17, aff'd 2007 ONCA 445. This court's recognition of the Confirmation Order is a condition precedent to the Confirmed Plan becoming effective. Recognition is therefore a fundamental step required for the Debtors to proceed with the distributions and transactions to the stakeholders contemplated under the Confirmed Plan.

[17] The Information Officer supports the relief sought by the applicant in this motion. In its Sixth Report, it stated that the Confirmed Plan is fair and reasonable in the circumstances and treats Canadian creditors equitably. As evidence of this, the Information Officer submits that, among other things, over 88 per cent of the creditors by value voted in favour of the Confirmed Plan, the OCC and UCC advocated for the Canadian creditors, and the Confirmed Plan was revised four times, resulting in additional funds for both Opioid Claimants and unsecured creditors. Accordingly, it recommends that this court recognize and give full force and effect in Canada to the Confirmation Order and the Confirmed Plan.

Terminating the Recognition Proceeding

[18] The applicant's request for the court's authorization to terminate the within recognition proceeding upon the occurrence of the Confirmed Plan's effective date and upon the Information Officer filing the Termination Certificate should be granted.

[19] Canadian courts commonly employ s. 49 of the *CCAA* to terminate cross-border recognition proceedings when appropriate, including when all matters requiring relief from the Canadian court have been completed. See: *Re GNC Holdings Inc. et al* [Conway J. Recognition Order dated October 16, 2020]; and *Re BBGI US, Inc. et al* [Hainey J. Recognition Order dated March 26, 2021]. In this regard, the applicant seeks an order a) releasing the Information Officer and its counsel regarding claims arising out of these recognition proceedings (except any claim arising out of gross negligence or wilful misconduct); and b) approving of the activities of the Information Officer, as well as its fees and the fees of its counsel.

[20] The applicant also seeks an order that a third-party stay of proceedings in favour of Mallinckrodt's co-defendants, the Province and the College, in the B.C. class action litigation be lifted upon the filing of the Termination Certificate. This relief should be granted. Upon the Confirmed Plan's Effective Date, the Mallinckrodt defendants will be released of all claims in respect of the B.C. class action litigation and all liability flowing therefrom will be channeled into the applicable opioid trust. Accordingly, the third-party stay of proceeding will no longer be necessary at that time.

[21] The Information Officer seeks approval of its activities as described in the Information Officer's six reports to this court. It also seeks approval of its fees and disbursements and the fees and disbursements of its counsel; and it seeks a release of itself and its counsel. The Information Officer prepared and served all those on the service list two separate affidavits in each of which it disclosed its fees for the period in question. There was no response from those so served. The Information Officer submits that all the fees and disbursements incurred by it and its counsel are fair and reasonable and were validly incurred. The applicant supports the approval of the activities of the Information Officer set out in the six reports, and the fees and disbursements of both the Information Officer and its counsel. Having reviewed the reports of the Information Officer and its fees and disbursements, as well as those of its counsel, and having heard the submissions of counsel, I am satisfied that the activities of the Information Officer as set out in its six reports, its fees and disbursements, and the fees and disbursements of its counsel should be approved.

[22] Having heard the submissions of counsel to the Information Officer, I am also satisfied that the Information Officer and its counsel made necessary and tangible contributions to the restructuring, including for the benefit of the Canadian creditors. They should be entitled to the releases sought, which relief is supported by the applicant.

[23] Order to go in the form attached hereto and signed by me. The Order is effective as of April 22, 2022, and it does not need to be entered.

Dietrich J.

Date: April 22, 2022