Court File No. CV-24-00722386-00CL

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 ATLAS GLOBAL BRANDS INC., GREENSEAL CANNABIS COMPANY, LTD., GREENSEAL NURSERY, LTD., AGMEDICA BIOSCIENCE INC., WELLWORTH HEALTH CORP., 5047346 ONTARIO INC., 8050678 CANADA INC. AND TAVIVAT NATURALS INC.

APPLICANTS

FACTUM OF THE APPLICANTS
(Application for an Initial Order under the CCAA)

June 19, 2024

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Randal Van de Mosselaer (LSA# 9923)
Tel: 403.260.7060
Email: rvandemosselaer@osler.com

Mary Paterson (LSO# 51572P)
Tel: 416.862.4924
Email: mpaterson@osler.com

Justin Kanji (LSO# 88178O)
Tel: 416.862.6642
Email: jkanji@osler.com

Lawyers for the Applicants

PART I - OVERVIEW

1. This factum is filed in support of an urgent application by Atlas Global Brands Inc. ("**Atlas**", together with its Ontario Subsidiaries (as defined below), the "**Applicants**") seeking an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.[1] It is proposed that Ernst & Young Inc. will act as Monitor in these CCAA Proceedings.

2. GreenSeal Cannabis Company, Ltd. ("**GreenSeal**"), GreenSeal Nursery, Ltd. ("**GreenSeal Nursery**"), AgMedica Bioscience Inc. ("**AgMedica**"), Wellworth Health Corp. ("**Wellworth**"), 5047346 Ontario Inc. ("**5047 Ontario**"), 8050678 Canada Inc. ("**8050 Canada**") and Tavivat Naturals Inc. ("**Tavivat**") are subsidiaries of Atlas (together, the "**Ontario Subsidiaries**"; the Applicants, together with all Atlas subsidiaries, is the "**Atlas Group**").[2]

3. The Atlas Group produces, distributes, and sells predominantly medical cannabis in Canada and internationally. The Applicants (the parent company as well as the Ontario Subsidiaries) are in a liquidity crisis and are unable to meet their obligations as they become due.

4. The Applicants' liquidity crisis was predominantly caused by four events:

(a) Due to complexities flowing from how the Atlas Group formed and a lack of capital and staff, Atlas could not finalize audited financial statements for the period ending March 31, 2023. On August 8, 2023, the OSC issued a Cease-Trade Order, which prevented Atlas from issuing securities (including convertible debt) to raise capital.

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[1] Affidavit of Jason Cervi sworn June 19, 2024 at para 1 ["**Initial Cervi Affidavit**"]. All capitalized terms not otherwise defined in this factum have the meaning ascribed to them in the Initial Cervi Affidavit.

[2] Initial Cervi Affidavit at para 2.

(b) For several reasons, including hostilities in the region, revenue from Israel has been materially below projections. In addition, a potential partner of Atlas, Harmony, sold product for which it collected but did not remit proceeds owing to Atlas' Israeli subsidiary. Then Harmony failed to repay a loan of approximately $530,000. Atlas sued Harmony and others in Israel to recover approximately $1.4 million, and those proceedings are pending. This development materially and negatively impacted the Atlas Group's cash position.

(c) The Canadian federal excise tax regime has severely impacted the cannabis industry because excise tax is predominantly computed as a fixed price on grams sold. Given price compression in the Canadian market, excise tax has become a larger component of net revenue. As of March 1, 2024, the Canadian cannabis industry owed approximately $221 million to the Canada Revenue Agency (the "**CRA**") in cannabis duties, and more than twenty cannabis companies have filed for insolvency protection in the last two years. In February 2024, the CRA began to take enforcement steps, including garnishing 50% of GreenSeal's receivables, which materially and negatively impacted the Atlas Group's cash position.

(d) GreenSeal entered into a factoring relationship with Stoke Canada Finance Corp. ("**Stoke**") based on certain Eligible Receivables and Eligible Purchase Orders. As a result of the CRA's garnishments of Eligible Receivables, Stoke sent a demand letter to GreenSeal dated May 27, 2024, demanding payment of more than $1.8 million and providing a section 244 notice of its intention to enforce security. On June 13, 2024, Stoke issued a notice of application asking the Court to appoint PricewaterhouseCoopers Inc. ("**PwC**") as receiver of certain assets of GreenSeal.

5. The Applicants believe there are opportunities for improved profitability if the Atlas Group can weather this liquidity crisis. Despite the significant issues described above, the Atlas Group has been able to successfully redirect its efforts to (i) increase sales to new international markets, particularly Australia and Germany (the "**International Strategy**"); and (ii) launch new products, such as D*gg Lbs in collaboration with Snoop Dogg (the "**Domestic Strategy**").

6. As a result of these efforts, the Atlas Group substantially increased its revenue. The Group earned 58% more revenue in the quarter ended December 31, 2023, than it had earned three quarters earlier, in January to March 2023. The revenue generated in the quarter ended December 31, 2023, reached a record annualized gross revenue of approximately $40 million. However, the CRA's more aggressive approach, combined with creditor demands and Stoke's application to appoint a receiver, has left the Atlas Group with no choice but to apply for an Initial Order.

7. An Initial Order, including an initial stay of proceedings (the "**Stay**") for seven days will provide the Atlas Group with much-needed breathing room to finalize debtor-in-possession financing and explore a restructuring path that would maximize recoveries for stakeholders. It will also permit the Atlas Group to work with the CRA to address excise tax arrears and tax compliance.

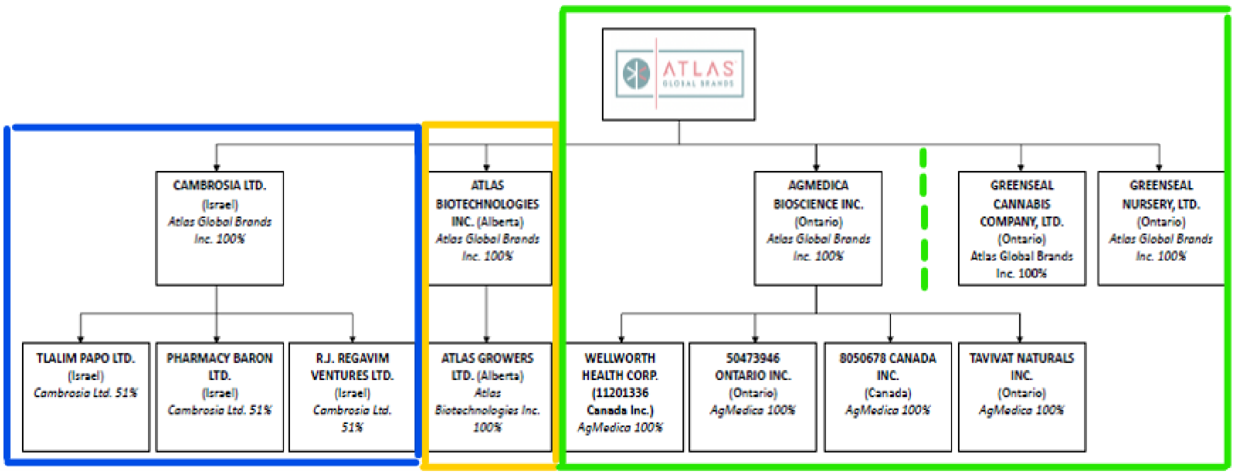
8. The proposed Initial Order makes few alterations to the model order. It seeks typical relief, including the Stay and court-ordered charges sufficient to cover the initial Stay Period. The relief requested is limited to what is needed to "keep the lights on" during the initial Stay Period.

9. The Applicants have been acting with due diligence and in good faith to address their current liquidity issues. The requested Stay will create an opportunity for the Applicants to develop a strategy to exit these proceedings as a going-concern, which outweighs any prejudice to creditors that might result during this period.

PART II - SUMMARY OF FACTS

Corporate Structure

10. A copy of the Atlas Group's current corporate chart is below.



11. The parent corporation is Atlas Global Brands Inc. ("**Atlas**"), a public company whose common shares trade on the CSE under the ticker symbol "ATL". Atlas came into being on December 22, 2022. Atlas is an Applicant. Atlas has 29 employees.

12. Atlas has four groups of subsidiaries:

(a) ***The AgMedica subsidiaries***, in the centre, were part of the Atlas Group from inception. AgMedica holds a cannabis licence from Health Canada (the "**AgMedica Cannabis Licence**") for its production and distribution facility at 510 and 566 Riverview Drive, Chatham-Kent, Ontario (the "**Chatham Facility**"). The AgMedica subsidiaries were the subject of a prior CCAA proceeding, in which EY was appointed as the Monitor, and which terminated in April 2021, before Atlas came into being. The five AgMedica subsidiaries are Applicants.

(b) ***The GreenSeal subsidiaries***, farthest to the right, were acquired by Atlas in April 2023. GreenSeal holds a cannabis licence from Health Canada for its facility in Stratford, Ontario (the "**Stratford Facility**"). GreenSeal Nursery is a licensed cannabis nursery, holding a cannabis nursery licence from Health Canada for its facility in Stratford, Ontario. Both GreenSeal subsidiaries are Applicants.

(c) ***The Atlas Alberta Subsidiaries***, second from the left in the corporate chart, produced cannabis concentrates. They were part of the Atlas Group from inception, but management decided to cease operations in 2023. On June 26, 2023, the Court of King's Bench of Alberta granted an Order appointing EY as the receiver and manager over the Atlas Alberta Subsidiaries. The receivership process is currently underway, including a sales process commenced by EY as the receiver.

(d) ***The Israeli subsidiaries***, on the far left of the corporate chart, include a holding company that holds a majority interest in three privately owned independent pharmacies in Israel through which the Atlas Group sells medical cannabis.

AgMedica and the Chatham Facility

13. The Chatham Facility focuses primarily on the international market. It is 215,000 square feet, within which AgMedica built a 110,000 square foot cannabis facility, with six active three-tiered grow rooms and five active four-tier larger scale grow rooms. The Chatham Facility has a growing capacity of approximately 6,500 kg per year. In addition, the Chatham Facility has six more larger scale four-tiered grow rooms, which are ready to start production once the relevant infrastructure, cooling, ventilation, and humidity systems are installed (the "**Chatham Expansion**"). The Chatham Expansion could increase capacity by 6,000 kgs annually.

14. AgMedica has approximately 74 full-time employees, and uses approximately 20 part-time seasonal workers through an agency, mostly in Chatham-Kent, Ontario. None of the Atlas Group's employees are unionized or otherwise party to a collective agreement.

15. The Chatham Facility is GACP, IMC-GAP (Israeli Medical Cannabis Standard, Good Agricultural Standard) and EU-GMP (European Union Good Manufacturing Practices) certified for flower and oil. The EU-GMP certification is the highest certification in the pharmaceutical space and encompasses production, handling, storage, and packaging of plant materials. It is a requirement for exporting medical cannabis to EU countries and takes several years to obtain.

16. AgMedica, as landlord, leases the remaining industrial space in the Chatham Facility to third-party tenants to generate non-core cash flow of approximately $46,000 per month.

17. AgMedica received a Phase I Environmental Site Assessment report dated March 1, 2022, that concluded that potentially contaminating activities were suspected to have occurred at the Chatham Facility and its neighbours, and areas of potential environmental concern were interpreted to exist. A Phase II ESA to assess the environmental condition of the site was warranted; however, AgMedica has not conducted a Phase II ESA due to lack of liquidity.

18. The Chatham Facility is owned by a wholly owned subsidiary of AgMedica, 5047 Ontario. The Chatham Facility has two mortgages:

(a) In relation to 566 Riverview Drive, Chatham, Hillmount Capital Mortgage Holdings Inc. ("**Hillmount**") provided the first mortgage, which has a principal amount outstanding of $3,000,000 and bears interest at the greater of 9.5% or 4.25% plus the RBC Prime Lending Rate with the balance due on November 1, 2024.

(b) In relation to 566 Riverview Drive, Chatham, 2596690 Ontario Inc. operating as AgriRoots provided the second mortgage, which has a principal amount owing of $12,100,000 at an interest rate of 15.0% per annum, compounded monthly with the balance due on September 1, 2024. The security of this loan is a first mortgage security on the Chatham Facility but ranks second to the Hillmount loan.

19. AgMedica received a demand letter from Hillmount dated June 18, 2024, demanding repayment in full of the debt totaling $3,392,722.30 with respect to the facilities, plus all legal fees and disbursements incurred by Hillmount. The letter attached a section 244 notice and Tax Certificates, showing property tax arrears of $355,100.40 for the Chatham Facility.[3]

GreenSeal and GreenSeal Nursery

20. GreenSeal's Stratford Facility focuses primarily on demand in the Canadian domestic market. The Stratford Facility is 30,000 square feet, and structured as a multi-tier vertical grow facility, growing flower, and drying it indoors. This Facility produces over 3,500 kg of cannabis flower annually. It is GACP certified. GreenSeal has 57 employees.

21. GreenSeal Nursery owns and manages over 1,000 cannabis plants' genetics. GreenSeal Nursery is managed by GreenSeal. GreenSeal Nursery does not have any employees.

22. On July 4, 2022, GreenSeal signed a Commitment Letter with Your Neighbourhood Credit Union Limited ("**YNCU**") whereby YNCU agreed to provide to GreenSeal three credit facilities in the aggregate amount of $5,346,485 (the "**Commitment Letter**"). The tranches include a commercial mortgage of $4,371,000, an additional commercial mortgage facility of $675,000

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3 Initial Cervi Affidavit at para 106.

(collectively, the "**Commercial Mortgages**") and a line of credit for of $300,000. As security, GreenSeal granted (i) a charge of $5.4 million over the Stratford Facility, (ii) a fixed and floating charge over certain real property and associated assets, and (iii) a subordinate fixed and floating charge over all assets and undertakings of GreenSeal subsequent only to existing charges. YNCU has a registered security interest pursuant to the PPSA against GreenSeal Cannabis.[4]

23. On June 7, 2023, Stoke and GreenSeal entered into the Receivables Purchase Agreement (as amended, collectively the "**GreenSeal RPA**") in which GreenSeal agreed to sell to Stoke certain Eligible Receivables of GreenSeal. As security for the payment and performance of its obligations, the GreenSeal RPA contemplates GreenSeal granting a continuing security interest in the moneys payable to or receivable by GreenSeal pursuant to the GreenSeal RPA.[5] In addition, Atlas granted a Corporate Guarantee to Stoke where it guaranteed, without security, the payment of all obligations of GreenSeal arising under the GreenSeal RPA (the "**GreenSeal Guarantee**").[6]

24. On September 9, 2023, GreenSeal and Stoke amended the GreenSeal RPA creating an Additional Facility through which GreenSeal could request an advance of credit ("**Advance Amount**") from Stoke against Eligible Purchase Orders (rather than Eligible Receivables). On a specific date, the "**Conversion Date**", the outstanding Advance Amount would automatically convert and be deemed a portion of the advanced amount under the GreenSeal RPA.[7]

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4 Initial Cervi Affidavit at paras 86-87.

5 Initial Cervi Affidavit at paras 88-89.

6 Initial Cervi Affidavit at para 90.

7 Initial Cervi Affidavit at paras 93-94.

25. As security for GreenSeal's obligations, the Additional Facility Supplement contemplates GreenSeal granting Stoke "a first priority security interest in, all of [GreenSeal's] right, title and interest in and to" certain assets of GreenSeal such as the Eligible Purchase Order; the goods and inventory, Debtor's accounts, documents, contract rights, and general intangibles related to the Eligible Purchase Order; and claims against suppliers related to the foregoing.[8]

26. The CRA's enforcement efforts, described below, impacted GreenSeal's relationship with Stoke. As a result of CRA garnishments of Eligible Receivables, Stoke sent a demand letter to GreenSeal dated May 27, 2024, demanding payment of more than $1.8 million and providing a section 244 notice of its intention to enforce security.[9]

27. On Sunday, June 9, 2024, Stoke sent GreenSeal's counsel an unissued a notice of application asking this Court (1) to appoint PwC as receiver of certain assets of GreenSeal and (2) to grant judgment against Atlas for $1,854,319.54 based on the GreenSeal Guarantee. Stoke also provided the supporting application record associated with the unissued notice of application.[10] The notice of application was issued on June 13, 2024.

Excise Taxes

28. Throughout 2023 and into 2024, the Canadian cannabis market experienced price compression, driven predominantly by competition from the illicit market and the inflationary pressure on input costs. As a result, excise tax has become a larger component of net revenue as it

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8 Initial Cervi Affidavit at para 94.

9 Initial Cervi Affidavit at paras 140-141.

10 Initial Cervi Affidavit at para 144.

is predominantly computed as a fixed price on grams sold rather than as a percentage of the selling price. Under the *Excise Act, 2001*, licencees are required to purchase excise stamps from the CRA and to affix those stamps to the cannabis products before selling them to a non-licenced person.[11]

29. In late February 2024, the House of Commons Standing Committee on Finance recommended making “adjustments to the excise duty formula for cannabis so that it is limited to a 10% ad valorem rate and a requirement to apply an excise stamp on cannabis products”. If this change were implemented, it would materially improve the Atlas Group’s ability to maintain a stable liquidity profile. Meanwhile, excise tax arrears in the Canadian cannabis industry have been growing. As of March 1, 2023, the Canadian cannabis industry owed approximately $221 million to the CRA in cannabis duties.[12]

30. As at May 20, 2024, GreenSeal had approximately $2,919,273.95 in in excise tax arrears. These arrears prompted the CRA to issue garnishment notices (each a “**CRA Requirement**”) to various provincial wholesalers. In February 2024, the CRA issued CRA Requirements to provincial wholesaler account debtors of GreenSeal directing payment to the Receiver General of 50% of the receivables owed to GreenSeal. To date, the CRA has garnished appropriately $854,719 of GreenSeal’s receivables and has provided notice of its intention to garnish an additional $1,259,480. This unanticipated garnishment materially impacted GreenSeal’s cash flow.[13]

31. On May 30, 2024, the CRA sent GreenSeal a legal warning about GreenSeal’s outstanding excise tax arrears. Moreover, the CRA has been taking other enforcement steps to collect the excise

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[11] Initial Cervi Affidavit at paras 122-123.

[12] Initial Cervi Affidavit at paras 124-125.

[13] Initial Cervi Affidavit at paras 126-128.

tax arrears, including threatening not to renew the required licences and refusing to supply excise stamps unless the excise tax arrears are paid. These steps jeopardize the Atlas Group's ability to generate revenue, which would make it impossible to repay the excise tax arrears.[14]

PART III - THE ISSUES AND THE LAW

32. The issue to be considered on this application is whether to grant the proposed form of Initial Order. The issues addressed in this factum are whether:

(a) the Applicants are a "debtor company" to which the CCAA applies;

(b) the initial Stay of Proceedings should be granted in favour of the Applicants;

(c) the Administration Charge (as defined below) should be granted;

(d) the Directors' Charge (as defined below) should be granted;

(e) the Proposed Monitor should be approved as Monitor of the Applicants in these CCAA proceedings; and

(f) the Intercompany Charge (as defined below) should be granted.

33. In addition, this factum address an issue to be raised at the Comeback Hearing regarding the impact of the Stay of Proceedings on the CRA's enforcement rights.

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[14] Initial Cervi Affidavit at paras 131-133.

A. The Applicants Are "Debtor Companies"

34. The CCAA applies to a "debtor company" or affiliated debtor companies where the total claims against the debtor or its affiliates exceed $5 million.[15] The Applicants are affiliated debtors who collectively have more than $5 million in debts.[16] They are also insolvent and in urgent need of the breathing room represented by the requested Stay.

35. Pursuant to section 2 of the CCAA, a "debtor company" means, *inter alia*, a company that is insolvent. Whether a company is insolvent for the purposes of the CCAA is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and Insolvency Act* (the "**BIA**") and to the expanded concept of insolvency accepted by this Court in *Stelco*.[17]

36. Under the BIA, a debtor is insolvent if: (a) the person is unable to meet his obligations as they generally become due; (b) the person has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of that person's property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[18]

37. Under the expanded *Stelco* definition, a debtor is insolvent if there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured.[19] The company is insolvent "if it is reasonably expected to run out of liquidity

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15 *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, ss 2(1), 3(1) [*CCAA*].

16 Initial Cervi Affidavit at para 34.

17 *Re Stelco Inc*, 2004 CanLII 24933 (ON SC) at para 25 [*Stelco*].

18 BIA, section 2.

19 *Stelco*, above at para 40.

within reasonable proximity of time as compared with the time reasonably required to implement a restructuring."[20] Insolvency is determined as of the time of filing the CCAA application.[21]

38. The Applicants are either currently insolvent under the BIA tests for solvency, or facing the kind of imminent liquidity crisis that satisfies the expanded *Stelco* test.[22] As discussed above, the Applicants have been unable to meet their obligations as they become due. GreenSeal and Atlas have received a demand letter requesting payment of more than $1.8 million and section 244 notice from Stoke, who have issued an application asking the Court to appoint a receiver.[23] In addition, the CRA asserts that GreenSeal has an outstanding excise tax arrears of more than $2.9 million.

39. Similarly, AgMedica received a demand letter from Hillmount demanding repayment of $3,392,722.30, plus legal fees and disbursements. The letter attached a section 244 notice. AgMedica is not current on its property taxes.[24] In addition, given the intensifying liquidity issues, AgMedica has not remitted approximately $1.5 million in payroll withholdings and taxes.[25]

40. In any event, at a minimum, the Applicants meet the expanded *Stelco* test for insolvency as a result of the dire liquidity crisis facing the Atlas Group. Absent the requested Stay and without the breathing room provided by the Stay to determine if debtor-in-possession (DIP) financing is available, the Applicants will be unable to meet their obligations as they come due.

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20 *Stelco*, above at paras 26, 40.

21 *Ibid* at para 4.

22 Initial Cervi Affidavit at para 7.

23 Initial Cervi Affidavit para 11(d).

24 Initial Cervi Affidavit para 104.

25 Initial Cervi Affidavit para 72.

B. This Court Should Grant the Requested Stay

41. Section 11.02 of the CCAA provides this Court with the discretion to grant the requested Stay for the initial period of 10 days, provided that the Court is satisfied that circumstances exist that make the order appropriate.[26] A CCAA stay is appropriate where it is designed to provide the debtor company with breathing room while it seeks determine whether it is possible to emerge from the CCAA on a going-concern basis, or whether another restructuring solution is feasible that will maximize recoveries for all stakeholders.[27]

42. The stay of proceedings for the initial ten-day period permitted under section 11.02 "allows for a stabilization of operations and a negotiating window".[28] The Initial Order meets the above requirement. It will provide the Applicants with a brief but critical window of time in which to determine whether DIP financing is available to allow them the time to develop a restructuring strategy. That strategy could take the form of a CCAA plan, a sale process, or some other solution. It will also permit the Applicants to begin negotiations with key stakeholders, such as Stoke and the CRA, with a view to developing a consensual path forward.

43. Absent exceptional circumstances, the relief sought during the initial ten-day period shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.[29] The requested relief in the Initial Order, in addition to the Stay, is strictly limited to only those measures

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26 CCAA, s. 11.02(3) (a-b).

27 *Target Canada Co*, 2015 ONSC 303 at para 8 [*Target*].

28 *Lydian International Limited (Re)*, 2019 ONSC 7473, at para 30 [*Lydian*].

29 CCAA, s. 11.001; *Lydian* at para 26.

or protections that are necessary to "keep the lights on" during the initial Stay period. If DIP financing is available, the Applicants will return to this Court to seek additional relief related to the proposed restructuring, including approval of the DIP facility and related charge.

44. It is just and appropriate to grant the requested Stay. The Applicants have acted with due diligence and in good faith. During the Stay period, the Applicants will operate in compliance with the cannabis regulatory regime. The Stay will stabilize and preserve the value of the Applicants' business and provide the Applicants with the breathing space which it seeks, while maintaining business operations in the ordinary course.

45. The benefits of the Stay outweigh any prejudice to creditors whose remedies will be stayed for a brief period while the Applicants determine if a restructuring is possible for the benefit of all stakeholders.

C. The Administration Charge Should Be Granted.

46. The Applicants request that this Court grant the Administration Charge in favour of the Applicants' counsel, the Proposed Monitor, and the Proposed Monitor's independent legal counsel in the amount of $400,000. The services of the Proposed Monitor and these advisors are critical to the Applicants' ability to restructure.

47. Section 11.52 of the CCAA provides this Court with the jurisdiction to grant a charge for the fees and expenses of financial, legal, and other advisors or experts.[30] Such a charge can rank in priority to the claims of existing secured creditors.[31] It is proposed that the Administration

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30 CCAA, s. 11.52(1)(a-c).

31 CCAA, s. 11.52(2).

Charge will rank in priority to the DIP Charge (once granted), the Directors' Charge (discussed below), and any existing security granted by the Applicants in favour of the Secured Creditors.

48. In *Canwest Publishing,* Justice Pepall identified a non-exhaustive list of factors that the Court may consider in approving an Administration Charge: (a) the size and complexity of the businesses; (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.[32] These factors have been applied frequently.[33]

49. The Applicants submit that the Administration Charge is warranted and that it is appropriate for this Court to exercise its jurisdiction under section 11.52(2) of the CCAA to grant the Administration Charge, given that:

(a) the Applicants' business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;

(b) the professionals protected by the Administration Charge have the requisite extensive knowledge and have, and will continue to, contribute to the restructuring of the Applicants;

(c) each professional is performing distinct functions and there is no duplication of roles so the Administration Charge will be minimized; and

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32 *Canwest Publishing Inc*, 2010 ONSC 222 at para 54 [*Canwest Publishing*].

33 See for example *Target* at paras 74 and 75; *Re U.S Steel Canada Inc*, 2014 ONSC 6145 [*US Steel*].

(d) the Proposed Monitor is supportive of the Administration Charge and believes the quantum of the Administration Charge is reasonable.[34]

50. The quantum of the proposed Administration Charge reflects the amounts required to secure the fees of the protected professionals for the initial Stay Period. It is anticipated that the Applicants will request an increased Administration Charge at the comeback hearing.

D. The Directors' Charge Should Be Granted

51. The Applicants are seeking a Directors' Charge in the amount of $920,000 (the "**Directors' Charge**") to secure the indemnity of their directors and officers for liabilities they may incur during the CCAA proceedings. The quantum of the Directors' Charge is limited to what is estimated to be required for the initial Stay period. It is anticipated that an increase to the Directors' Charge will be requested at the comeback hearing.

52. Section 11.51 of the CCAA provides this Court with the express statutory jurisdiction to grant a charge in favour of the directors and officers of a company as security for the indemnity provided by the company in respect of certain statutory obligations.[35] This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.[36] In *Canwest Global*, Pepall J. also noted that a directors' charge avoids

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34 Initial Cervi Affidavit para 166.

35 CCAA, s. 11.51.

36 *Re Canwest Global Communications Corp.,* 2009 CarswellOnt 6184 at para 46 [*Canwest Global*].

destabilization, thereby assisting in the restructuring by enabling the debtor to retain the experienced board of directors supported by experienced senior management.[37]

53. The proposed Directors' Charge is both necessary and appropriate, given that:

(a) the Applicants may not have sufficient funds available to satisfy any contractual indemnity should its directors and officers need to call upon such indemnities;

(b) the Applicants cannot be certain whether any existing insurance will be adequate or will respond to any claims made;

(c) the Applicants will require the directors and officers, whose institutional knowledge and experience will help facilitate an effective restructuring;

(d) the Directors' Charge would only cover the obligations and liabilities that the directors and officers may incur after the commencement of the CCAA proceedings and does not secure obligations incurred as a result of the directors' gross negligence or wilful conduct; and

(e) the Proposed Monitor is supportive of the Directors' Charge.[38]

54. The continued involvement of the Directors and Officers in these proceedings is important in this highly regulated industry and is conditional upon this Court granting the Directors' Charge. It is proposed that Directors' Charge will rank after the Administration Charge.[39]

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37 *Canwest Global*, above at para 48.

38 Initial Cervi Affidavit para 171.

39 Initial Cervi Affidavit para 163.

E. The Proposed Monitor Should Be Appointed

55. Upon the granting of an Initial Order, section 11.7(1) of the CCAA requires that a qualified trustee in bankruptcy be appointed to monitor the debtor company's business and financial affairs. The Proposed Monitor satisfies these requirements and has consented to act as monitor in these CCAA proceedings.[40] The Proposed Monitor is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA.[41]

56. Appointing EY is particularly appropriate: EY acted as the monitor for AgMedica and certain of its subsidiaries in CCAA proceedings running from 2019 to 2021.[42] EY is also currently serving as the receiver and manager of the Atlas Alberta Subsidiaries.[43]

F. The Intercompany Charge Should be Granted

57. Where the operations and expenses of debtor companies are funded in the ordinary course through intercompany advances, it is appropriate for the CCAA court to approve the continuation of those arrangements during the CCAA Proceedings and to grant an intercompany change over the assets of the borrowers.[44]

58. To the extent that any Applicant (each an "**Intercompany Lender**") makes any payment or incurs or discharges any obligation that is a payment or obligation of one or more of the other

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40 CCAA, s. 11.7(1).

41 CCAA, s. 11.7(2).

42 Initial Cervi Affidavit at paras 43-44.

43 Initial Cervi Affidavit at para 63.

44 *Performance Sports Group Ltd. (Re)*, 2016 ONSC 6800 at paras 33-35 [*Performance Sports*]; *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 at paras 62-67.

Applicants (other than the Intercompany Lender) or otherwise transfers value to or for the benefit to one or more of the other Applicants (other than the Intercompany Lender, as applicable), it is proposed that such Intercompany Lender be granted a charge on the Property in the amount of such payment or obligation or transfer (the "**Intercompany Charge**"). The Intercompany Charge will rank subordinate to Administration Charge and the Directors' Charge, but in priority to all other claims. The Proposed Monitor supports the Intercompany Charge.

59. The Intercompany Charge is necessary to protect the Applicants and their respective creditors for any obligation an Intercompany Lender incurs on behalf of another Applicant and to secure such amounts. Intercompany charges to protect intercompany advances have been approved in CCAA proceedings under the general powers in section 11 of the CCAA to make such orders as the court considers appropriate.[45] The Intercompany Charge will not secure any intercompany advances made before the date of the Initial Order.

G. Comeback Hearing: The CRA

60. At the Comeback Hearing, the Applicants intend to seek additional language in the ARIO that confirms that the Stay applies to the CRA's garnishment notices and declaring that no recipient of a garnishment in connection with pre-filing Excise Tax shall become liable to pay to His Majesty an amount equal to any amount paid to the Applicants during the Stay Period. In addition, the Applicants intend to seek additional language in the ARIO confirming that the CRA is stayed from refusing to supply cannabis excise stamps to the Applicants.

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[45] *Ibid* at para 34.

61. The purchase and sale of cannabis products is subject to excise taxes under the *Excise Act, 2001* (Canada) (the "**Excise Act**").[46] Put simply, pursuant to the *Excise Act, 2001*, all packaged cannabis products removed from the premises of a cannabis licensee to enter the Canadian duty-paid market for retail sale are required to have a cannabis excise stamp. Generally, the Cannabis licensee who packaged the cannabis product is required to determine the appropriate cannabis excise stamp, and to apply such stamp before the product enters into the duty-paid market. Cannabis licensees are liable for the cannabis duties payable on cannabis products which they stamp, generally at the time of delivery to a purchaser, and must file a monthly information return to calculate and remit any cannabis duty payable in that monthly period. [47]

62. The excise tax rate is predominantly computed as a fixed price on grams sold, rather than a percentage of the selling price. Throughout 2023 and into 2024, the Canadian cannabis market experienced price compression, driven predominantly by competition from the illicit market and the inflationary pressure on input costs. As a result, the Applicants, like many other cannabis businesses, including over twenty that have become insolvent in the last two years, have found that their tax burden is increasing while they are generating materially lower revenues in the market. The arrears of excise tax owing by cannabis companies to the CRA as of March 1, 2024, is estimated at over $200 million. GreenSeal's and AgMedica's excise tax arrears for the period leading up to the filing date are approximately $2.9 million and $4 million, respectively (the "**Pre-filing Excise Tax**").[48]

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[46] SC 2002, c. 22.

[47] Initial Cervi Affidavit at para 123; *Excise Act*, s 158.13.

[48] Initial Cervi Affidavit at paras 11(c), 125 and 131.

63. In February 2024, the CRA issued garnishment orders (the "**CRA Requirements**") to provincial wholesaler account debtors of GreenSeal (the "**Garnishees**") directing payment to the Receiver General of 50% of the receivables owed to GreenSeal.[49] To date, the CRA has garnished a total of approximately $854,719 of GreenSeal's receivables and has provided notice of its intention to garnish a further $1,259,480.[50]

64. Further, while the Pre-filing Excise Tax remains outstanding, the CRA has refused to supply the required excise stamps that permit GreenSeal to sell its products, further impairing the cash position of the Applicants' business. In addition, the CRA is threatening to suspend or not renew GreenSeal's and AgMedica's excise licences. Such steps will preclude the Atlas Group from generating revenue, which will make it impossible to repay any of the Pre-filing Excise Tax.[51]

65. The requested Stay prohibits any further collections pursuant to the CRA Requirements. Section 11.02(1) of the CCAA permits this Court, on an initial application, to make an order on any terms that it may impose, for a period of up to ten days. Such an order is permitted to restrain "further proceedings in any action, suit or proceeding against the company" and to prohibit "the commencement of any action, suit or proceeding."[52] Accordingly, the terms of the Model Order contain broad language which, among other things, imposes a stay of proceedings applicable to "all rights and remedies of any … governmental body … affecting the Business or the Property."[53]

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[49] Initial Cervi Affidavit at para 127.

[50] Initial Cervi Affidavit at para 128.

[51] Initial Cervi Affidavit at para 132.

[52] CCAA, s. 11.02(1)(b) and (c).

[53] Proposed Initial Order, clause 12.

66. It is well established that the scope of the CCAA stay is intended to be broad with a view to achieving the objectives of the CCAA.[54] There are no provisions of the CCAA or of the Excise Act that would preclude the stay of proceedings from applying to a CRA Requirement issued under the Excise Act. In fact, at least one recent cannabis company insolvency proceeding has involved a stay of similar CRA garnishment orders for unpaid excise taxes.[55] There are also several examples in the case law where the CCAA stay has been applied to stay garnishment orders under other taxing statutes (e.g. the *Excise Tax Act*).[56]

67. The CRA Requirements, by diverting 50% of GreenSeal's revenues to satisfy the Pre-filing Excise Tax, not only deprive the Applicants of much-needed revenues to restructure their business, but also confer a *de facto* priority on the CRA, contrary to section 38(1) of the CCAA which provides that Crown claims are unsecured unless otherwise specified.[57] There is no specified priority for excise taxes.

68. Section 11.02 of the CCAA is subject to an exception for "investigations, actions, suits or proceedings by a regulatory body" under section 11.1 of the CCAA, which can only be stayed upon satisfying the Court that it is appropriate to do so. However, that exception does not apply to proceedings by a regulatory body directed at the enforcement of the payment of money.[58]

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54 See for example *Montreal (Ville) c. Restructuration Deloitte Inc.*, 2021 SCC 53 at para. 51.

55 Amended and Restated Initial Order in the CCAA proceeding regarding Heritage Cannabis Holdings Corp. and certain other applicants, granted on April 11, 2024, clause 14.

56 *Canada (Minister of National Revenue) v. Points North Freight Forwarding Inc.*, 2000 SKQB 504; *United Used Auto & Truck Parts Ltd. (Re)*, 2002 BCSC 30.

57 CCAA, s. 38(1).

58 CCAA, s. 11.1(2). See *Just Energy Corp. (Re)*, 2021 ONSC 1793 at para. 79.

69. Since the Garnishees are potentially exposed to personal liability under the Excise Act if they fail to comply with the CRA Requirements, the Applicants anticipate that they will ask this Court at the Comeback Hearing to clarify that the Stay applies to all collection actions, including garnishments or requirements to pay under the Excise Act. The Applicants will also request this Court to declare that no recipient of a CRA Requirement in relation to the Pre-Filing Excise Tax shall be liable to pay to the Crown an amount equal to the amount paid to the Applicants during the Stay Period, or have any liability under section 289 of the Excise Act.[59] The proposed clarification language is set out in Schedule C to this factum and is intended to provide the Garnishees with the comfort that they can resume remitting the funds covered by the CRA Requirements to the Applicants without exposure to personal liability.

70. It is also anticipated that the Applicants will seek additional relief to prohibit the CRA from refusing to supply, cancelling or directing the return or destruction of the excise stamps required for the Applicants to sell their products based on the Applicants' CCAA filing or on the failure to pay the Pre-filing Excise Tax. This order is subject to the requirement that the Applicants pay post-filing excise taxes in the ordinary course.[60] This proposed language is also found at Schedule C.

71. The requested Stay will defer the collection actions and other proposed enforcement steps by the CRA while it is determined if the business can be restructured for the benefit of all stakeholders. If the Initial Order is granted, the Applicants propose to engage in discussions with the CRA based on their understanding that the CRA has, in other cannabis company insolvency proceedings, been prepared to negotiate to cancel garnishment orders and resolve the outstanding

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[59] Draft Initial Order, clause 13.

[60] Draft Initial Order, clause 16.

excise tax issues on a consensual basis.[61] It is not in the interests of any stakeholders, including the CRA, for the business to fail.

72. If the CRA objects to any of this relief, there will be a full opportunity for the CRA to make submissions at the Comeback Hearing.

PART IV - NATURE OF THE ORDER SOUGHT

73. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2024.

OSLER, HOSKIN & HARCOURT, LLP
per Mary Paterson
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicants

TO: **THE ATTACHED SERVICE LIST**

[61] Initial Cervi Affidavit at paras 5(e) and 130, referring to the recent insolvency of Heritage Cannabis.

SCHEDULE "A": LIST OF AUTHORITIES

1. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC).
2. *Canada (Minister of National Revenue) v Points North Freight Forwarding Inc.*, 2000 SKQB 504.
3. *Canwest Publishing Inc./Publications Canwest Inc.* (*Re)*, 2010 ONSC 222.
4. *Montreal (Ville) v Restructuration Deloitte Inc.*, 2021 SCC 53.
5. *Just Energy Corp. (Re)*, 2021 ONSC 1793.
6. *Lydian International Limited (Re)*, 2019 ONSC 7473.
7. *Stelco Inc. (Re)*, 2004 CanLII 24933 (ON SC).
8. *U.S Steel Canada Inc. (Re)*, 2014 ONSC 6145.
9. *Target Canada Co. (Re)*, 2015 ONSC 303.
10. *United Used Auto & Truck Parts Ltd. (Re)*, 2002 BCSC 30.

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy And Insolvency Act*, RSC 1985, c B-3**

Definitions
2 In this Act,
[…]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

> **(a)** who is for any reason unable to meet his obligations as they generally become due,
>
> **(b)** who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> **(c)** the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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

Definitions
2 (1) In this Act,
[…]

debtor company means any company that

> **(a)** is bankrupt or insolvent,
>
> **(b)** has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
>
> **c)** has made an authorized assignment or against which a bankruptcy order has been made under
> the *Bankruptcy and Insolvency Act*, or
>
> **(d)** is in the course of being wound up under the *Winding-up and Restructuring Act* because the
> company is insolvent; (*compagnie débitrice*)

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Relief reasonably necessary

11.001 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.

Stays, etc. — initial application

11.02 (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

11.02 (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.

Regulatory bodies — order under section 11.02

11.1 (2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Security or charge relating to director's indemnification

11.51 (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.

Court may order security or charge to cover certain costs

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.

Priority

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

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

> **(a)** if the trustee is or, at any time during the two preceding years, was
>
> > **(i)** a director, an officer or an employee of the company,
> >
> > **(ii)** related to the company or to any director or officer of the company, or
> >
> > **(iii)** the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Status of Crown claims

38 (1) In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in section 39 called a "workers' compensation body", rank as unsecured claims.

***Excise Act*, 2001 SC 2002 c 22**

Packaging and stamping of cannabis

158.13 A particular cannabis licensee shall not enter a cannabis product into the duty-paid market unless

(a) the cannabis product is packaged;

(b) the package has printed on it prescribed information;

(c) the cannabis product is stamped — using a cannabis excise stamp that has been issued to the particular cannabis licensee and that indicates that cannabis duty has been paid — by

(i) the particular cannabis licensee, or

(ii) another cannabis licensee if prescribed conditions are met;

(d) if the cannabis product is to be entered in the duty-paid market of a specified province, the cannabis product is stamped — using a cannabis excise stamp that has been issued to the particular cannabis licensee and that indicates that additional cannabis duty in respect of the specified province has been paid — by

(i) the particular cannabis licensee, or

(ii) another cannabis licensee if prescribed conditions are met; and

(e) the particular cannabis licensee is responsible for the cannabis product immediately before it is stamped.

SCHEDULE "C"
TEXT OF PROPOSED CRA LANGUAGE FOR ARIO

POSSESSION OF PROPERTY AND OPERATIONS

xx. […]

xx. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay: […]

(c) all federal excise taxes, customs and import duties arising under the *Excise Act, 2001*, S.C. 2002, c.22 (collectively, "**Excise Taxes**") required to be remitted by the Applicants in connection with the Business but only where such Excise Taxes are accrued or collected after the date of this Order; and

NO EXERCISE OF RIGHTS OR REMEDIES

xx. […]

xx. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, but for greater certainty, during the Stay Period any collection actions, including garnishment and requirements to pay under section 289 of the *Excise Act, 2001*, S.C. 2002, c.22 (collectively "**Garnishments**"), previously taken or taken on or after the date of this Order by or on behalf of the Canada Revenue Agency to collect Excise Tax which became payable before or after the granting of this Order ("**Pre-filing Excise Tax**"), are stayed and suspended, and no recipient of a Garnishment in connection with such Pre-filing Excise Tax shall become liable to pay to His Majesty an amount equal to any amount paid to the Applicants during the Stay Period or have any liability under the provisions of section 289 of the *Excise Act, 2001*, S.C. 2002, c.22 or any other similar Act.

CONTINUATION OF SERVICES

xx. […]

xx. **THIS COURT ORDERS** that provided the Applicants continue to pay such Excise Tax as may arise from and after the granting of this Order in accordance with paragraph xx(c) of this Order, the Canada Revenue Agency shall continue to supply cannabis excise stamps to the Applicants pursuant to Part 4.1 of the *Excise Act, 2001*, and is hereby stayed and prevented during the Stay Period from refusing to supply, cancelling or directing the return or destruction of cannabis excise stamps from the Applicants in accordance with any applicable legislation, including the *Excise Act, 2001* or otherwise, by reason only of the issuance of this Order or the failure by any of the Applicants to pay Pre-Filing Excise Tax which became payable prior to the date of this Order.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, C. C-36, AS AMENDED

Court File No: CV-24-00722386-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ATLAS GLOBAL BRANDS INC., GREENSEAL CANNABIS COMPANY, LTD., GREENSEAL NURSERY, LTD., AGMEDICA BIOSCIENCE INC., WELLWORTH HEALTH CORP., 5047346 ONTARIO INC., 8050678 CANADA INC. AND TAVIVAT NATURALS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANTS

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Randal Van de Mosselaer (LSA# 9923)
Tel: 403.260.7060
Email: rvandemosselaer@osler.com

Mary Paterson (LSO# 51572P)
Tel: 416.862.4924
Email: mpaterson@osler.com

Justin Kanji (LSO# 88178O)
Tel: 416.862.6642
Email: jkanji@osler.com

Lawyers for the Applicants