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
(Motion for Amended and Restated Initial Order)

June 27, 2024

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PART I - NATURE OF THE APPLICATION

1. On June 20, 2024, Atlas Global Brands Inc. ("**Atlas**") as well the "**Ontario Subsidiaries**", namely, 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**") (collectively, the "**Applicants**") were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

2. The Initial Order appointed Ernst & Young Inc. ("**EY**") as the court-appointed monitor in these CCAA proceedings (in such capacity, the "**Monitor**"). The Initial Order also granted a stay of proceedings (the "**Stay of Proceedings**" and was tailored to provide the Applicants with the relief reasonably necessary to maintain the *status quo* and continue their ordinary course operations during an initial 7-day period (the "**Initial Stay Period**"). Although all parties appearing supported the granting of a stay of proceedings, two secured creditors (Hillmount Capital Inc. ("**Hillmount**"), the first mortgagee of the AgMedica Chatham Facility, and Stoke Canada Finance Corp. ("**Stoke**"), which has interests in GreenSeal's receivables) opposed priming charges.

3. In the five days since the granting of the Initial Order, the Applicants, with the assistance of the court-appointed Monitor, have been working in good faith and acting with due diligence to stabilize their business and operations to prepare for a responsible and orderly restructuring as part of these CCAA proceedings. Among other things, the Applicants have:

   (a) secured and negotiated the terms of debtor-in-possession ("**DIP**") financing in an amount necessary to provide breathing room to the Applicants to explore a consensual restructuring with stakeholders, including to design and implement a sale or investment solicitation process (the "**SISP**"); and

(b) reached an agreement with the Canada Revenue Agency (the "**CRA**") that (i) the CRA Requirements that garnished receivables (thereby impacting Stoke's interests), will be revoked, and (ii) that the CRA will continue to sell excise stamps to the Applicants who meet certain criteria. As a result, the Applicants anticipate being able to continue to sell their products to generate receipts for the benefit of creditors with security over the receivables and the business as a whole.

4. To permit the Applicants the breathing space necessary to continue its efforts to restructure the Business and achieve a going-concern solution for the benefit of all stakeholders, the Applicants now seek an Amended and Restated Initial Order ("**ARIO**"). The limited and tailored relief requested in the ARIO, including the extension of the Initial Stay Period, will facilitate the next steps in the orderly restructuring of the Applicants. The specific relief sought includes:

(a) An extension of the Initial Stay Period to Friday, July 26, 2024;

(b) Approval for the Applicants to enter into a DIP term sheet (the "**DIP Term Sheet**") and borrow under the facility to be provided under the DIP Term Sheet, which borrowings are to be secured by a priority charge to the DIP lender (the "**DIP Lender's Charge**");

(c) Approval of increases to: (i) the Administration Charge to $600,000; and (ii) the Directors' Charge to $1,400,000;

(d) An order relieving the Applicants from any obligation to call and hold its annual general meeting of shareholders ("**AGM**") until further Order of this Court;

(e) Relief for the Applicants from the obligation to incur expenses for the duration of the Stay of Proceedings in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange (collectively, the "**Securities Provisions**"), and declaring that none of the directors, officers, employees, and other representatives of the Applicants or the Monitor in these CCAA proceedings (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make the Securities Filings; and

(f) A sealing order in respect of the First Cervi Confidential Affidavit (defined below).[1]

5. The relief being sought is the logical next step in these CCAA proceedings with a view to continuing the Applicants' business as a going concern and to maximizing the recoveries in the best interests of the Applicants' stakeholders. If this Court grants the ARIO, the Applicants intend to continue to pursue solutions to resolve the objections of their creditors, and will work with the Monitor to design the SISP that will permit the Applicants to restructure as a going

[1] Second Affidavit of Jason Cervi, sworn June 26, 2024 at para 5(f) [*Second Cervi Affidavit*].

concern, preserving the value within the Atlas Group, and maximizing the recovery of creditors. To date, several parties have expressed interest in participating in the SISP.[2]

6. Three secured creditors have served applications to appoint receivers. First, on Sunday, June 9, 2024, Stoke sent to GreenSeal's counsel an unissued 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. On June 13, 2024, this Court issued the Notice of Application (the "**Stoke Receivership Application**"). This Court scheduled the Stoke Receivership Application to be returnable on the same date as the Comeback Hearing.

7. As is described below, there is uncertainty about whether Stoke or Your Neighbourhood Credit Unition ("**YNCU**") (the first mortgagee on the Stratford Facility) is entitled to the benefit of assets that are the subject of the Stoke Receivership Application. As a result, the Cash Flow Forecast prepared by the Applicants with the assistance of the Monitor contemplates that no Purchased Receivables will be used by GreenSeal (or any other Applicant) pending resolution of this uncertainty to ensure that neither Stoke nor YNCU will be prejudiced. In addition, $500,000 funded by the DIP will be paid to the Monitor to be held for the benefit of Stoke or YNCU once this uncertainty is resolved. For these reasons and as is described below, the Stoke Receivership Application should be adjourned *sine die*.

8. On June 25, 2024, Hillmount as first mortgagee served an application to appoint a receiver over the Chatham Facility as well as other assets including the cannabis at the Facility (the

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2 First Confidential Affidavit of Jason Cervi, sworn June 26, 2024 [*First Cervi Confidential Affidavit*].

"**Hillmount Receivership Application**"). The Hillmount Receivership Application should be adjourned for reasons to be addressed during oral argument in the Comeback Hearing.

9. Lastly, on the afternoon of June 25, 2024, YNCU's counsel advised that it would be bringing a receivership application in respect of the assets of GreenSeal returnable at the Comeback Hearing. YNCU served that application on June 26, 2024. YNCU's mortgage is in good standing as all payments are current. YNCU has not made a demand for payment, has not issued a notice of default, has not provided GreenSeal with an opportunity to cure any alleged default, and has not issued a section 244 notice. Furthermore, the Cash Flow Forecast shows that YNCU's accruing interest will be fully funded through these CCAA proceedings and the information in the First Confidential Cervi Affidavit there is sufficient evidence to conclude that YNCU remains fully secured even if the priming charges are granted. Even if YNCU had a basis to appoint a receiver, it is not prejudiced by these CCAA proceedings.

10. It is in the interest of all stakeholders that the business be returned to a viable footing rather than permitting these secured creditors who are not prejudiced by this CCAA proceeding to carve up the assets to the detriment of the remaining stakeholders.

PART II - SUMMARY OF FACTS

Background

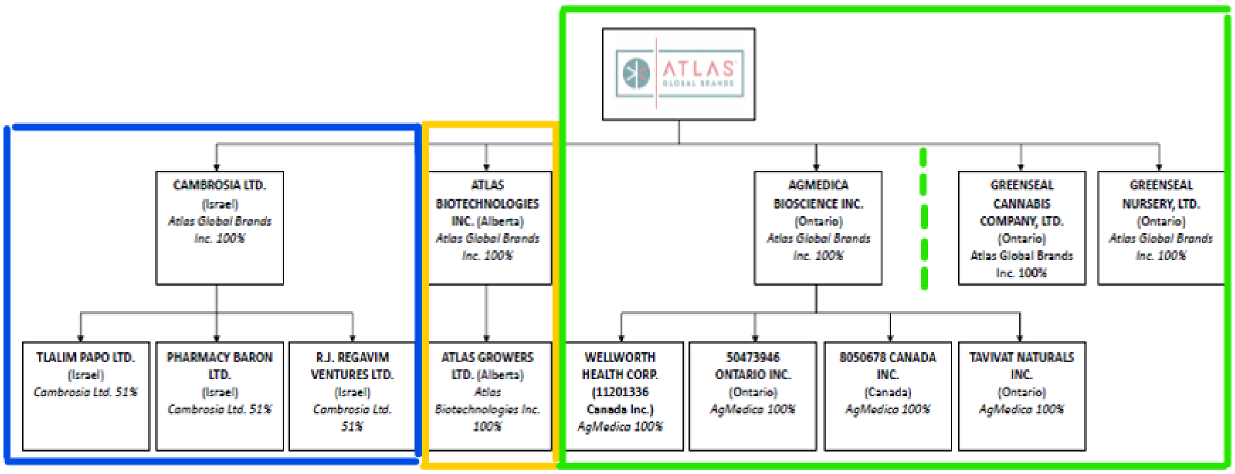
11. On June 20, 2024, this Court granted the Initial Order appointing EY as the Monitor; granting the Stay of Proceedings to June 27, 2024; and granting the following priority charges (collectively, the "**Charges**") over the Property:

(a) The Administration Charge, in the maximum amount of $400,000;

(b) The D&O Charge, in the maximum amount of $500,000; and

(c) The Intercompany Charge, in the maximum aggregate amount of $150,000.[3]

12. A copy of the Atlas Group's current corporate chart is below.[4]



13. The Applicants are comprised of Atlas and two 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**"). AgMedica has approximately 74 full-time employees, and uses approximately 20 part-time seasonal workers through an agency. The Chatham Facility is GACP, IMC-GAP (Israeli Medical Cannabis Standard, Good Agricultural Standard) and

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3 *Atlas Global Brands Inc., et al* (20 June 2024), Toronto, ONSC [Commercial List] CV-24-00722386-00CL at paras 12, 14 and 17 [*Atlas Initial Order Endorsement*].

4 See Exhibit "A" to Initial Affidavit of Jason Cervi, sworn June 20, 2024 [*Initial Cervi Affidavit*].

EU-GMP (European Union Good Manufacturing Practices) certified for flower and oil. The EU-GMP certification is the highest certification in the pharmaceutical space. The Chatham Facility has two mortgages: The first mortgagee is Hillmount; and the second mortgagee is 2596690 Ontario Inc. ("**AgriRoots**").

(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**"). It is GACP certified. GreenSeal Nursery is a licensed cannabis nursery, holding a cannabis nursery licence from Health Canada for its facility in Stratford, Ontario. GreenSeal has 57 employees. The Stratford Facility has one mortgage: the YNCU mortgage.

Agreement with the Canada Revenue Agency

14. As described in the Initial Cervi Affidavit, GreenSeal's and AgMedica's excise tax arrears leading up to the filing date were approximately $2.9 million and $4 million, respectively (the "**Pre-filing Excise Tax**").[5] 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.[6] To date, the CRA has garnished a total of approximately $1,393,622.87 of GreenSeal's receivables.[7]

15. Further, while the Pre-filing Excise Tax remains outstanding, the CRA had refused to supply the required excise stamps that permit GreenSeal to sell its products, further impairing the

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5 *Ibid* at para 131.

6 *Ibid* at para 127.

7 *Second Cervi Affidavit*, at para 21.

cash position of the Applicants' business. In addition, the CRA was threatening to suspend or not renew GreenSeal's and AgMedica's excise licences. Such steps would preclude the Atlas Group from generating revenue, which would make it impossible to repay the Pre-filing Excise Tax.[8]

16. The Applicants and the CRA have reached an agreement pursuant to which the CRA will withdraw the CRA Requirements and will continue to sell excise stamps to GreenSeal and AgMedica. That agreement contemplates that the CRA will supply cannabis stamps in the ordinary course during the Stay Period provided that:

(a) the Applicants remain current with their monthly filing obligations under section 160 of the *Excise Act, 2001*;

(b) the number of stamps ordered do not exceed the licencee's capacity limit, which is represented by the number of stamps reported as used on products on the B300 Cannabis Duty and Information Returns for the most recent 4-month period. These would apply to all licencees that are registered with the stamping regime and wish to place an order; and

(c) post-CCAA duties are paid or remitted on a timely basis as and when they become due.

17. Once the CRA withdraws the CRA Requirements, all receivables previously subject to those Requirements can be paid by wholesalers to the applicable Atlas Group subsidiary.

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8 *Initial Cervi Affidavit* at para 132.

Proposed DIP Financing

18. Pursuant to a binding DIP Term Sheet dated June 26, 2024, Shalcor Management Inc., as lender (the "**DIP Lender**") has agreed to provide the Applicants, as borrower with a non-revolving credit facility of up to $7,000,000.[9]

19. The DIP Facility includes a commitment fee of $210,000, which was fully earned by the Applicants upon execution of the DIP Term Sheet, shall be secured by the DIP Lender's Charge and paid in two tranches: a) $70,000 upon the Advance (as defined in the DIP Term Sheet) under the DIP Facility; and b) $140,000 on the Maturity Date.[10]

20. The DIP Facility is conditional, among other things, upon granting the DIP Lender's Charge in an amount sufficent to secure all Advances. The DIP Lender's Charge shall be over all of the property of the Applicants, subject to a cap of $3,000,000 in respect of GreenSeal's assets.[11]

21. In accordance with the DIP Term Sheet, the DIP Facility is to be used during the CCAA proceedings to fund: a) working capital needs of the Applicants, including servicing ordinary course payments of principal and interest to certain secured creditors (including YNCU); b) professional fees and expenses incurred by the Applicants and Monitor, in each case in accordance with the cash flow projections approved by the Monitor and the DIP Lender; c) Recoverable Expenses (as defined in the DIP Term Sheet); and d) such other costs and expenses of the Applicants as may be agreed to by the Lender and the Monitor, in writing.[12]

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[9] *Second Cervi Affidavit, supra* note 1 at para 68.

[10] *Ibid* at para 70.

[11] *Ibid* at para 72.

[12] *Ibid* at para 73.

Uncertainty Regarding Stoke Security

22. On June 7, 2023, Stoke and GreenSeal entered into the GreenSeal RPA which describes GreenSeal agreeing to sell and Stoke agreeing to buy certain Eligible Receivables of GreenSeal. Stoke appears to assert that it:

(a) Owns all Purchased Receivables;

(b) Has a security interest in all Eligible Receivables; and

(c) Has a security interest in all Eligible Purchase Orders.

23. However, these interests are uncertain. For example, the CRA refused to recognize Stoke's alleged ownership interest in the Purchased Receivables and continued to garnish those receivables. With respect to its security interest, the text of the GreenSeal RPA does not use the word "all" when describing the security interest; it uses the word "the", as in "the Eligible Purchase Orders". Lastly, YNCU, the mortgagee on the Stratford Facility owned by GreenSeal, has a fixed and floating charge over all the assets and undertakings of GreenSeal subsequent only to existing charges. The YNCU security predates the GreenSeal RPA and Stoke's interests. Although YNCU, Stoke and GreenSeal began to negotiate a *pari passu* priority agreement, GreenSeal does not have a final or executed copy of such agreement. As a result, it is unclear which of YNCU and Stoke has priority in relation to the Eligible Receivables and the Eligible Purchase Orders.

Interest in the SISP

24. To date, the Applicants have received multiple inquiries from entities interested in providing DIP funding, acting as a stalking horse bidder, and participating in a SISP. More

information is available in the First Confidential Cervi Affidavit, in respect of which the Applicants are seeking a sealing order.

PART III - THE ISSUES AND THE LAW

25. The issues to be considered on this motion are whether this Court should:

(a) extend the Stay of Proceedings to July 26, 2024;

(b) approve the DIP and grant the DIP Lender's Charge;

(c) increase the quantum of the Administration Charge and the Directors' Charge and delete the Intercompany Charge;

(d) relieve the Applicants of any obligation to call and hold the AGM until further Order of this Court and relieve the Applicants of obligations in relation to the Securities Filings; and

(e) grant a sealing order in respect of the First Cervi Confidential Affidavit.

26. In addition, the Applications ask this Court to adjourn the Receivership Applications.

A. The Stay of Proceedings Should Be Extended

27. The Stay of Proceedings expires on June 27, 2024. Subsection 11.02(2) of the CCAA authorizes this Court to grant an extension of the stay of proceedings for "any period the court considers necessary".[13] To grant such an extension, the Court must be satisfied that circumstances

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13 *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 s. 11.02(2) [*CCAA*]; *Laurentian University of Sudbury*, 2021 ONSC 1098 at para 56.

exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.[14]

28. The Court's jurisdiction under the section 11 stay provisions of the CCAA "should be construed broadly to accomplish the legislative purposes of the *CCAA*".[15] These purposes include, among others, enabling the continuation of the applicants' business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring to maximize recovery for stakeholders.[16] Accordingly, a Stay of Proceedings will be appropriate where it maintains the *status quo* and provides applicants with breathing room while they seek to restore solvency and emerge from the CCAA proceedings on a going-concern basis.[17]

29. The Applicants, as supported by the Monitor, request that the Stay of Proceedings be extended up to and including July 26, 2024. The Applicants submit that this request is consistent with the well-established purposes of a CCAA stay and is appropriate in the circumstances. Since the Initial Order was granted, the Applicants have acted, and continue to act, with good faith and due diligence and in the best interest of their stakeholders.[18]

30. In the five days since the granting of the Initial Order, the Applicants have taken steps to stabilize and continue ordinary course operations and advance their restructuring objectives. Among other things, the Applicants have:

(a) entered into the DIP Loan Term Sheet;[19] and

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14 *CCAA* s. 11.02(2) and s. 11.02(3); *U.S. Steel Canada Inc, (Re)*, 2017 ONSC 1967 at para 23 [*U.S. Steel*].
15 *Canwest Global Communications Corp.*, 2011 ONSC 2215 at para 24 [*Canwest Global*].
16 *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 15 [*Century Services*].
17 *Century Services*, *supra* note 13 at para 14.
18 *Second Cervi Affidavit*, *supra* note 1 at para 64.
19 *Ibid* at para 66.

(b) reached an agreement with the CRA freeing up receivables and permitting future sales of the Applicants' products.[20]

31. In addition, the Applicants have created and implemented a communication plan to advise key stakeholders of the CCAA proceeding and prepared a "Frequently Asked Questions" sheet for impacted entities.[21] In a similar vein, the Applicants have communicated with, provided information to, and answered questions of various stakeholders and employees, as well as meeting with employees and the Monitor to discuss cash flow management.[22] The Applicants continue to work with the Monitor in good faith to respond to numerous stakeholder inquiries on a daily basis.

32. The proposed extension to the Stay of Proceedings is necessary to prevent: (i) enforcement action by the Applicants' contractual counterparties and (ii) disruption to the Applicants' business operations while they seek to move their restructuring forward with a view to maximizing value for all stakeholders. The proposed extension of the Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to continue the Applicants' ordinary course operations.

33. The proposed extension of the Stay of Proceedings will enable the Applicants to continue to pursue solutions to resolve the objections of their creditors and work with the Monitor to design the SISP that will permit the Applicants to restructure as a going concern, preserving the value within the Atlas Group, and maximizing the recovery of creditors. As the First Confidential Cervi Affidavit shows, there is robust interest among several entities to participate in a SISP.

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20 *Ibid* at para 24.
21 *Ibid* at para 11(c).
22 *Ibid* at para 11(e) and 11(f).

34. It is anticipated that if the ARIO is granted, and the DIP approved, the Applicants will have sufficient liquidity to support ordinary course operations during the Stay Period.[23]

35. The Applicants submit that the proposed extension of the Stay of Proceedings is in the best interests of the Applicants and their Stakeholders, consistent with the purposes of the CCAA, and is appropriate in the circumstances.

B. This Proceeding Should Not be Converted into Two/Three Receiverships

36. Hillmount, Stoke, and YNCU seek the appointment of receivers and CROs as follows:

(a) Hillmount seeks the appointment of PwC as receiver of all property, assets and undertaking of AgMedica and its subsidiaries, including the Chatham Facility but excluding the cannabis assets (the "**Excluded Cannabis Assets**") as well as the appointment of David Blair as Chief Restructuring Officer who holds the necessary approvals to preserve the AgMedica Cannabis Licence and who can exercise decision-making authority relating to the Excluded Cannabis Assets. The Hillmount Receivership Application will be addressed in oral argument;

(b) Stoke seeks the appointment of PwC as receiver of GreenSeal's Eligible Receivables, the related Reserves, the related books and records, all Eligible Purchase Orders, the related goods and inventory (including cannabis products) and related items, and proposes to engage Howard Steinberg and Steinberg Advisory Corp. to facilitate the handling and liquidation of the cannabis inventory as he holds the necessary approvals; and

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23 *Ibid* at para 73.

(c) YNCU seeks to appoint PwC as receiver over certain assets, including real property, but not including the cannabis assets of GreenSeal.

37. These applications for the appointment of a receiver rely on section 101 of Ontario's *Courts of Justice Act* (the "**CJA**")[24] and section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") to support their applications.[25] Under both provisions, the Court's power and discretion to appoint a receiver depends on the Court's determination that it is "just and convenient" to do so.

38. The Applicants submit that the discontinuation of the CCAA proceeding and the appointment of multiple receivers is neither "just" nor "convenient". It is in the best interests of stakeholders as a whole, including Stoke and YNCU, for the Applicants to seek to restructure their business as a going concern.

39. The appointment of a receiver is an extraordinary and intrusive remedy that should only be granted after a careful balancing of the effect of such an order on all parties and others who may be affected by the order.[26] This is particularly true where the secured creditor seeking a receivership has no contractual right to the appointment of a receiver, as is the case with Stoke.

40. The Applicants have an active business that involves numerous stakeholders and employees. This contrasts with a number of cases involving single-purpose real estate companies where there is no active business to be saved and where a receivership is the only logical means to

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[24] RSO 1990, c C.43.

[25] RSC 1985, c B-3.

[26] *Akagi v Synergy Group (2000) Inc.*, 2015 ONCA 368 at para 67.

complete a project. There is no presumption, even in cases involving real property (and this case is more than that), that a receivership is the preferred choice over a CCAA proceeding.[27]

41. In choosing between a receivership or a CCAA process, the court must balance the competing interests of stakeholders to determine which process is more appropriate.[28] This Court has already determined that the Applicants are "debtor companies" to which the CCAA applies and that the Applicants meet the technical requirements for protection under the CCAA.[29] Numerous Courts have recognized the CCAA as a flexible and helpful mechanism for preserving assets, restructuring insolvent entities, and for facilitating liquidations.[30]

42. The Applicants intend to use the CCAA to obtain the breathing room to address the several factors that have contributed to their financial difficulties – including negotiating with the CRA with respect to unpaid excise taxes, exploring the potential for a going-concern restructuring through a SISP. As is described in the First Confidential Cervi Affidavit, the Applicants have received multiple inquiries from entities interested in providing a DIP, acting as a stalking horse bidder, and participating in a SISP. The record suggests that a going-concern outcome is possible.

43. By contrast, a receivership will be directed at enforcing the rights of secured creditors without the same holistic approach to the restructuring of the business. Any benefits to stakeholders other than the senior secured creditors are likely to be incidental at best. It is

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[27] *AFC Mortgage Administrative Inc. v Sunrise Acquisitions (Stayner) Inc. et al.* (29 February 2024), Toronto ONSC [Commercial List] CV-23-00710361-00CL at para 63 [*AFC Mortgage*].

[28] *Romspen Investment Corp. v 6711162 Canada Inc.*, 2014 ONSC 2781 at para 61.

[29] *Atlas Initial Order Endorsement*, *supra* note 4 at para 8.

[30] *AFC Mortgage*, *supra* note 27 at para 66.

premature to conclude that there is no hope of a viable restructuring such that a receivership, and a realization of the Applicants' assets, is the only option to maximize recoveries.

44. Compared to a receivership, a CCAA proceeding mitigates certain deleterious effects of a receivership on the debtor's business. A receivership sale, for example, frequently results in a lower price.[31] A receivership may well damage the debtor's relations with its employees, suppliers, customers, and other stakeholders.[32]

45. Both a receivership and a CCAA proceeding require professional fees to be incurred. In this case, however, the secured creditors are proposing multiple receiverships with multiple professionals, including specialized professionals with the right licences and clearances to take possession of the cannabis assets. The Applicants propose one CCAA proceeding without the need for additional licence- and clearance-holding persons. In addition, only a CCAA proceeding provides the hope that the Applicants' business can be restructured for the benefit of all stakeholders. Any allegations about loss of confidence in the management of the Applicants will be addressed by the regularization of operations that occurs within a CCAA proceeding as a result of the ongoing oversight of the Monitor and the Court.

46. In *Pacific Shores*, the Court dismissed receivership applications by the secured creditors, emphasizing the importance of good faith and due diligence in proceedings under the CCAA.[33] The Court found that the debtors, despite facing significant financial difficulties, had demonstrated a genuine intention to restructure their business and present a viable plan to their creditors. The

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31 *Royal Bank v Chongsim Investments Ltd.*, 1997 CanLII 12112 (ONSC) at paras 18 and 19.

32 *Ibid*. See also *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 at para 58.

33 *Pacific Shores Resort & Spa Ltd. (Re),* 2011 BCSC 1775 at para and 32 [*Pacific Shores*].

Court said that the ongoing operations and complex business structure were better managed within the CCAA framework, providing a more favorable outcome for all stakeholders involved.[34] The Court considered the potential prejudice to secured creditors but concluded that the benefits of DIP financing and the continuation of business operations outweighed any potential prejudice.[35] The Court noted that a receivership would likely obliterate financial interests for many stakeholders, whereas the CCAA proceedings allowed for the possibility of a more equitable resolution.[36]

47. Similarly, in these CCAA proceedings, the Applicants' genuine commitment to good faith and due diligence coupled with the benefits of the DIP, and the structured oversight of the Monitor and the Court underscores the appropriateness of proceeding under the CCAA rather than through fragmented receiverships, thereby minimizing prejudice and promoting the overall benefit of all stakeholders involved.

48. To the extent Stoke alleges prejudice, the Cash Flow Forecast contemplates that none of the anticipated $1.35 million in receivables associated with the Purchased Receivables will be used by GreenSeal (or any other Applicant) pending resolution of the uncertainty associated with the competing security between YNCU and Stoke. Furthermore, as the Cash Flow Forecast shows, $500,000 will be advanced to the Monitor and held in trust upon resolution of the priority claims between Stoke and YNCU. In this manner, the entire amount demanded by Stoke is addressed through the CCAA proceedings such that Stoke is not prejudiced by the CCAA proceedings.[37]

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[34] *Pacific Shores*, *supra* note 32 at paras 52 and 56.

[35] *Pacific Shores, supra* note 32 at paras 48-49.

[36] *Pacific Shores, supra* note 32 at paras 58-59.

[37] The Applicants note that the Supplemental Affidavit of Cristobal Arnao is inadmissible pursuant to two rules of evidence. First, the material regarding Mr. Steinberg's opinion about GreenSeal does not meet the necessary requirements to qualify as admissible opinion evidence. Mr. Steinberg is not independent: if the Stoke Receivership Application is granted, Mr. Steinberg will benefit from a lucrative engagement managing the

49. To the extent YNCU alleges prejudice, GreenSeal has paid all amounts owing in respect of the YNCU mortgage: there are no arrears. Similarly, the Cash Flow Forecast and the proposed ARIO shows that all upcoming interest payments owing to YNCU will be paid. Given that YNCU is the senior secured creditor of GreenSeal, no other creditor is prejudiced by this approach. Given that YNCU will be paid what it is owed in accordance with the governing contracts during the CCAA proceeding, YNCU is not prejudiced.

50. In addition, YNCU's proposal to appoint a receiver over the assets of GreenSeal not including the cannabis raises several concerns that should be addressed. First, it is unclear how the proposed receiver can take possession of and market the Stratford Facility without explaining how it proposes to manage the cannabis within that Facility. It is not an answer to say that the receiver appointed by Stoke, or its agent, will take possession of the cannabis as there remains uncertainty regarding whether Stoke has security interests in all of the cannabis assets at the Stratford Facility.

51. Second, GreenSeal's main source of revenue is its sales of D*ggLbs, the cannabis product associated with Snoop Dogg. GreenSeal is not party to the licence agreement with Snoop Dogg. Unless Atlas and GreenSeal are in the same insolvency proceeding, GreenSeal will immediately lose its main source of revenue.

52. Similarly, YNCU does not have security in respect of GreenSeal Nursery. Appointing a receiver in respect of GreenSeal precludes GreenSeal from using the more than 1,000 cannabis plants' genetics that permits GreenSeal to provide the market with an optimal product mix. In other

GreenSeal cannabis assets. Furthermore, Mr. Steinberg did not provide the information required by Rule 53.03 and did not sign the acknowledgement of an expert's duty as contemplated by Rule 53.03(2). Lastly, the evidence is inadmissible hearsay evidence with Mr. Arnao repeating what he was told by Mr. Steinberg. This evidence does not meet the necessity nor reliability requirements for hearsay evidence to be admissible.

words, appointing a receiver over GreenSeal, as Stoke and YNCU proposes to do, severely limits GreenSeal's ability to continue as a going-concern operation.

53. In any event, any incremental prejudice experienced by Stoke and YNCU is outweighed by the benefits to all stakeholders if the CCAA proceeding is allowed to continue and bears fruit.

C. This Court Should Approve the DIP and Grant a Priority Charge to the DIP Lender's Charge

54. The DIP Lender has agreed to provide funding to the Applicants, as borrowers during these CCAA proceedings under the DIP Facility on the terms set out in the DIP Term Sheet, to a maximum principal amount of $7,000,000.

55. Pursuant to s 11.2 of the CCAA[38], the Applicants seek the DIP Lender's Charge in favour of the DIP Lender in an amount up to $7,000,000 plus interest, fees and expenses as security for any amounts advanced under the DIP Facility from and after the date of the ARIO. The Applicants request that the DIP Lender's Charge rank after the Administration Charge and Director's Charge.

56. Section 11.2(1) of the CCAA provides this Court with the express statutory authority to approve the DIP Facility and the DIP Lender's Charge.[39] The DIP Lender's Charge must be "in an amount the court considers appropriate" and may not secure an obligation that exists before the order is made.[40] The proposed DIP Lender's Charge satisfies these conditions, as it is sized appropriately to the Applicants' needs, and does not operate to secure any of the DIP Lender's pre-filing obligations, as the DIP Lender has no such obligations.

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[38] *CCAA*, s. 11.2.

[39] *CCAA*, s. 11.2(1).

[40] *Ibid*.

57. Section 11.2(4) of the CCAA sets out a number of factors to guide this Court when deciding whether to approve a DIP Charge: the period during which the company is expected to be subject to proceedings under this Act; how the company's business and financial affairs are to be managed during the proceedings; whether the company's management has the confidence of its major creditors; whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; the nature and value of the company's property; whether any creditor would be materially prejudiced as a result of the security or charge; and the monitor's report on the cash flows of the debtor.[41]

58. Given the information in the First Cervi Confidential Affidavit, there is evidence that a SISP may generate a going-concern outcome for the benefit of all stakeholders. In addition, given the information in the First Cervi Confidential Affidavit, combined with the thoughtful approach taken to the Cash Flow Forecast, there is evidence in the record that the secured creditors remain fully secured even if the DIP Lender's Charge is granted. In addition, the DIP Lender's Charge as it applies to GreenSeal is limited to $3 million.

59. The Applicants submit that the DIP Charge meets the foregoing requirements. The Applicants have restricted the quantum of the Charge to an amount that is reasonably necessary to meet their needs while pursuing options to preserve the value of the business.[42]

D. This Court Should Increase the Administration Charge and the Directors' Charge

60. Pursuant to the Initial Order, the Applicants obtained an Administration Charge in the amount of $400,000, a Directors' Charge in the amount of $500,000, and an Intercompany Charge

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[41] *CCAA*, s. 11.2(4).

[42] *Second Cervi Affidavit*, *supra* note 1 at para 68.

in the amount of $150,000. As required by sections 11.001 and 11.2(5)[43] of the CCAA, these represented limited amounts reasonably necessary for the continued operations of the Applicants in the ordinary course of business for the initial 7-day period. The Applicants are now seeking to increase the Administration Charge and the Directors' Charge for the amounts reasonably required during these CCAA proceedings and to delete the Intercompany Charge.

1. Administration Charge

61. This Court granted the initial Administration Charge in reliance on section 11.52 of the CCAA.[44] The Applicants seek to increase their Administration Charge from $400,000 to $600,000. Such a charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders.[45] *Canwest Publishing* describes a non-exhaustive list of factors: (a) the size and complexity of the businesses; (b) the proposed role of the beneficiaries; (c) whether there is an unwarranted duplication; (d) whether the quantum 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.[46]

62. As this Court recognized in granting the Initial Order, the Applicants' business is "highly regulated, subject to complex statutory and regulatory restrictions and requirements".[47] This Court also recognized the experience and skill of the professionals to be protected by the Administration

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43 *CCAA*, s. 11.001 and s. 11.2(5).

44 *CCAA*, s. 11.52.

45 *Walter Energy (Re)*, 2016 BCSC 107, at para 41; *U.S. Steel Canada Inc.*, 2014 ONSC 6145 at para 22.

46 *Canwest Publishing Inc.*, 2010 ONSC 222 at para 54.

47 *Atlas Initial Order Endorsement*, *supra* note 2 at para 11.

Charge, as well as the lack of overlap and duplication of functions.[48] The need of the Applicants for the advice and support of such professionals cannot be denied.[49] The same considerations support the increase to the Administration Charge. The increased amount sought is appropriate and necessary to ensure ongoing professional advice to achieve a going-concern outcome.[50]

2. Directors' Charge

63. In the Initial Order, the Applicants obtained a Directors' Charge in the amount of $500,000 to secure the indemnity of the Directors and Officers for liabilities they may incur during the CCAA Proceedings. The Applicants are now seeking to increase the Directors' Charge for the amounts reasonably required during these CCAA proceedings, namely $1,400,000. This Court has the authority under section 11.51 of the CCAA to grant this requested increase.[51]

64. In granting the Initial Order, this Court acknowledged the purpose of the Directors' Charge in avoiding disruption of operations and keeping experienced directors and officers in place during the attempted restructuring – factors which are particularly important in light of the highly regulated environment in which the Applicants operate. This Court found that the requirements for the initial Directors' Charge were satisfied, and the amount sought was appropriate and reasonably necessary for continued business operations during the initial 7-day period.

65. The amount of the initial Directors' Charge was limited to the estimated exposure up until the expiry of the Initial Stay Period. Currently, the Applicants seek to increase the Directors'

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48 *Ibid*.

49 *Ibid*.

50 *Second Cervi Affidavit,* supra note 1 at para 84.

51 *CCAA*, s. 11.51.

Charge to the amount sized to be commensurate with the indemnification obligations and liabilities that the Directors and Officers may face during the Stay Period. The Directors and Officers will only be entitled to the benefit of the Directors' Charge to the extent the existing insurance policies in favour of the Directors and Officers (the "**Insurance Policies**") are unavailable or insufficient.

E. This Court Should Extend the Time to Hold the AGM

66. Subsection 182(1) of the *British Columbia Business Corporations Act* (the "**BCBCA**") provides that a corporation must call an annual shareholders' meeting no later than fifteen months after holding the last preceding annual meeting. Where a corporation initiates proceedings under the CCAA, it is common for the Court to permit a BCBCA-incorporated Applicant to delay calling and holding the annual shareholders' meeting until after the CCAA proceedings have concluded.[52]

67. Atlas has not complied with the requirements of the BCBCA, its governing corporate legislation, to hold an annual meeting of securityholders on or before October 28, 2023 (being 15 months after the date of its shareholder meeting on July 28, 2022 and after giving effect to a six-months extension granted by the Registrar of Companies for British Columbia (the "**2023 AGM**"). Atlas had scheduled the 2023 AGM for July 19, 2024, however subsequently cancelled it on June 21, 2024, upon the commencement of these proceedings.[53]

68. In light of the present CCAA proceedings, it is not appropriate to hold the AGM at this juncture. The Applicants' resources and time are better focused on its restructuring efforts. Further, there is no prejudice to stakeholders given that detailed financial information and other information

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[52] *Business Corporations Act (British Columbia),* SBC 2002, c 57 at s. 182(1); *Re Canwest Global Communications Corp*, 2009 CanLII 55114 (ONSC) at paras 53-54.

[53] *Second Cervi Affidavit*, para 78.

regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings and published on the Monitor's website.

F. This Court Should Seal the First Cervi Confidential Affidavit

69. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Applicants request that the First Confidential Cervi Affidavit be treated as confidential and sealed, and not form part of the public record. The test for a sealing order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test considers the following factors:[54]

(a) whether court openness poses a serious risk to an important public interest;

(b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and

(c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.

70. Each of these considerations supports the proposed sealing order:

(a) **Public Interest**: The court has found that there is a public interest both in maximizing recovery in an insolvency and protecting the integrity of a sale process.[55] The First Confidential Cervi Affidavit contains appraisals of the Chatham Facility and the Stratford Facility. Disclosure of this information could taint the proposed sale process that the Applicants are seeking to develop in consultation with the Monitor. Additionally, the First Confidential Cervi Affidavit

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54 *Sherman Estate v Donovan*, 2021 SCC 25 at para 38.
55 *Danier Leather Inc., Re*, 2016 ONSC 1044 at paras 82 and 84.

contains the list of all parties that have contacted the Applicants with respect to the provision of DIP financing and expressing interest in acting as a stalking horse bidder or as a participant in a sale process.

(b) **Lack of a Reasonable Alternative**: There is no reasonable alternative to the sealing order which would protect the confidentiality of the materials that are sought to be kept confidential in the First Confidential Cervi Affidavit.

(c) **Proportionality**: CCAA courts have approved sealing orders where the information over which confidentiality is sought to be maintained is "discrete, proportional, and limited."[56] The proposed sealing order fulfils these criteria, as it applies only to the limited materials identified above. The public disclosure of the information would not assist the Applicants' stakeholders in any way, and the benefits of the proposed sealing order in protecting the DIP financing process and the potential future sale process outweigh any negative effects.

PART IV - NATURE OF THE ORDER SOUGHT

71. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and respectfully request that this Court grant the proposed form of ARIO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF JUNE 2024.

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[56] *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753, at para 63.

OSLER, HOSKIN & HARCOURT LLP
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TO: THE ATTACHED SERVICE LIST

SCHEDULE "A": LIST OF AUTHORITIES

Cases

1. *AFC Mortgage Administrative Inc. v Sunrise Acquisitions (Stayner) Inc. et al.* (29 February 2024), Toronto ONSC [Commercial List] CV-23-00710361-00CL.
2. *Akagi v Synergy Group (2000) Inc.*, 2015 ONCA 368.
3. Atlas Global Brands Inc., et al (20 June 2024), Toronto, ONSC [Commercial List] CV-24-00722386-00CL.
4. *Canwest Global Communications Corp.*, 2011 ONSC 2215.
5. *Canwest Publishing Inc*., 2010 ONSC 222.
6. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC).
7. *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60.
8. *Danier Leather Inc. (Re)*, 2016 ONSC 1044.
9. *Laurentian University of Sudbury*, 2021 ONSC 1098.
10. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753.
11. *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775.
12. *Romspen Investment Corp v 6711162 Canada Inc.*, 2014 ONSC 2781.
13. *Royal Bank v Chongsim Investments Ltd.*, 1997 CanLII 12112 (ONSC).
14. *Sherman Estate v Donovan*, 2021 SCC 25.
15. *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967.
16. *U.S. Steel Canada Inc.*, 2014 ONSC 6145.
17. *Walter Energy (Re)*, 2016 BCSC 107.

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

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

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

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- **(a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- **(b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- **(c)** take any other action that the court considers advisable.

***British Columbia Business Corporations Act*, SBC 2002, c 57**

Annual general meetings

182 (1) Subject to subsections (2) to (5), a company must hold an annual general meeting,

(a) for the first time, not more than 18 months after the date on which it was recognized, and

(b) after its first annual reference date, at least once in each calendar year and not more than 15 months after the annual reference date for the preceding calendar year.

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

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. — other than initial application

11.02 (2) 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

(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.

Interim financing

11.2 (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, 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

(2) 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

(4) 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.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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.

Priority

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

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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.

***Courts of Justice Act*, RSO 1990, c C.43**

Sealing documents

137 (2) 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.

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

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