SUPERIOR COURT OF JUSTICE

# COUNSEL/ENDORSEMENT SLIP

**COURT FILE NO.: CV-24-00722386-00CL, CV-24-00722700-00CL, CV-24-00722799-00CL**

**DATE: July 2, 2024**

**NO. ON LIST: 1**

**TITLE OF PROCEEDING:**
**ATLAS GLOBAL BRANDS INC et al v. The Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Minister of National Revenue et al**

**BEFORE: JUSTICE PENNY**

## PARTICIPANT INFORMATION

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| Mary Paterson<br>Osler, Hoskin & Harcourt LLP | Atlas Global Brands Inc. et al. | mpaterson@osler.com |
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**For Defendant, Respondent, Responding Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| | | |
| R. Brendan Bissell<br>Jared Rosenbaum<br>Reconstruct LLP | Stoke Canada Finance Corp. | cfell@reconllp.com<br>bbissell@reconllp.com<br>jrosenbaum@reconllp.com |
| D.J Miller<br>Derek Harland<br>Thornton Grout Finnigan LLP | Hillmount Capital Mortgage Holdings Inc. | DJmiller@tgf.ca<br>DHarland@tgf.ca |
| Leanne Williams<br>Divi Dev<br>Thornton Grout Finnigan LLP | Your Neighbourhood Credit Union | lwilliams@tgf.ca<br>ddev@tgf.ca |

| | | |
|---|---|---|
| Edward Park | Canada Revenue Agency | edward.park@justice.gc.ca |
| Monica Faheim<br><br>Miller Thomson LLP | Counsel to the DIP Lender | mfaheim@millerthomson.com |
| Alex Van Kralingen | 1402171 Alberta Inc. | avankralingen@israelfoulon.com |

**For Other, Self-Represented:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
| | | |
| Trevor Courtis<br><br>Counsel for the Monitor | McCarthy Tetrault LLP | tcourtis@mccarthy.ca |
| Karen Fung<br>Greg Adams<br><br>Court-appointed Monitor | Ernst & Young Inc. | karen.k.fung@parthenon.ey.com<br>greg.j.adams@parthenon.ey.com |
| Howard Steinberg (observing) | | howard@howardscapital.com |
| Marc Rivard (observing)<br>Ryan Latour (observing) | Your Neighbourhood Credit Union | rlatour@yncu.com |
| Natalie Douglas (observing) | Atlas Global Brands Inc. et al. | natalie@atlasglobalbrands.com |
| Mike McTaggart (observing) | | |
| Christine Sinclair | | |
| William McLennan | | |
| Jason Cervi (observing) | Atlas Global Brands Inc. et al. | jason@atlasglobalbrands.com |
| Dylan Chochla | | |
| David Blair | | |
| David Goldstein | | |
| T Griffiths | | |

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**ENDORSEMENT OF JUSTICE PENNY:**

[1] Since my initial order in this matter on June 20, 2024, the parties have worked hard to find solutions to the multiple competing interests at play. Much progress has been made. Now, the Applicants move for an amended and restated initial order. They seek:

an extension of the stay

approval of a bridge financing loan and DIP financing, together with charges associated with these loans

increases to the Administration Charge and the Directors' Charge

relief from the obligation to hold the Atlas AGM and from the requirement to make various ongoing securities filings during the currency of the CCAA proceedings, and

a limited sealing order.

[2] The specific terms negotiated for all of this relief is supported by the Monitor and supported by all parties. The draft ARIO has been negotiated with certain protections for the creditors in mind, which I accept as reasonable in the circumstances.

[3] A significant feature of the parties' negotiated resolution to these steps is that the AgMedica and Green Seal businesses have been isolated. This makes sense for number of reasons, including the fact that the creditor pools are different and that the two business' needs and means are different.

[4] The stay extension is supported by the cash flows to September 2024 provided by the Monitor. The Monitor advises, and the evidence supports the conclusion, that the Applicants have been acting in good faith and with due diligence in the prosecution of these proceedings since they were initiated June 2024.

[5] The stay in respect of AgMedica is extended to July 26, 2020, at which time it is anticipated there will be a SISP approval motion. The stay in respect of Green Seal is granted to July 5, 2024, to allow the parties to pursue ongoing discussions around the financing of Green Seal's operations post-filing, which is still uncertain and unresolved. The Green Seal cash flows indicate that it can keep the lights on until then.

[6] The terms of the proposed DIP financing have changed significantly in the last few days. The AgMedica bridge financing is for the purpose of paying out the Hillmount indebtedness, with the ultimate plan that Agriroots, the second mortgagee, will acquire that debt and stand in Hillmount's place. The DIP financing has been downsized somewhat to reflect the different treatment of AgMedica. The $5 million proposed DIP financing is sufficient, with the expected payout of the bridge financing loan, to cover operations to September 2024, by which time the Applicants and the Monitor hope to have concluded a successful transaction.

[7] Both loans will be secured against AgMedica property and will not prime the interests of Hillmount, Stoke or the Credit Union. I find the amount of the loans and the nature of the charges reasonable in the circumstances. They are approved.

[8] The need for interim financing for Green Seal, and any related charges, will be addressed on July 5, 2024 at 10:00 AM, the next return date in these proceedings. I note that Stoke and the Credit Union reserve all rights; their applications to appoint a receiver are adjourned but remain outstanding.

[9] The Administration Charge is proposed to increase from $400,000 to $600,000. The increase will not, however, prime Hillmount, the Credit Union or Stoke. As noted in my initial endorsement in this matter, professional assistance is critical in proceedings of this kind. I find the amount of the proposed charges, and the exceptions negotiated by the parties, reasonable in the circumstances.

[10] The Directors' Charge is currently $500,000. It is proposed that the Directors' Charge be split, again between AgMedica and Green Seal: $680,000 and $740,000 respectively. These charges are sized to reflect the actual level of D&O exposure over the anticipated length of the CCAA proceedings. The negotiated solution among the Applicants and their creditors is that the AgMedica Directors' Charge will not prime Hillmount and the Green Seal Directors' charges will not prime the Credit Union or Stoke. While the cash flows contemplate the amounts giving rise to potential D&O liability being paid, the Directors' Charge provides assurances that, if they are not, directors and officers are protected. This is a common feature of CCAA proceedings, where the continued support and direction of senior management is necessary for a successful restructuring.

[11] During the CCAA proceedings, the directors and officers need to be focused on the restructuring of the business to maximize benefits for all stakeholders. Because it is clearly not appropriate for Atlas Global Brands to be holding its AGM while in the midst of CCAA proceedings, it is appropriate that this requirement be postponed. Further, there is an extant cease trade order against Atlas. Atlas has notified equityholders of these proceedings. The court supervised CCAA proceedings will, enhanced by the

Monitor and its website, be a transparent process where all stakeholders, including equityholders, will have access to current information regarding the status of the Applicants and of these CCAA proceedings. It is therefore appropriate to suspend the Applicant's ongoing disclosure obligations. This will, by express terms of the proposed ARIO, not interfere with any actions by relevant regulatory bodies, consistent with s. 11.1(2) of the CCAA.

[12] I am satisfied that the requested sealing order for the Confidential Appendices meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in CCAA proceedings to maximize the benefits of a restructuring. I direct counsel for the Applicants to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the ARIO and this endorsement.

[13] ARIO to issue in the form signed by me this day.

Penny J.