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

(APPROVAL AND REVERSE VESTING ORDER)

October 4, 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 - NATURE OF THE MOTION

1. On June 20, 2024, the Applicants were granted protection under the CCAA pursuant to an Initial Order of this Court, which has been amended three times (the "**TARIO**").[1] EY was appointed as Monitor. On July 26, 2024, this Court issued the SISP Approval Order, which authorized a sales and investment solicitation process (the "**SISP**") for the sale of the Applicants' property and business.[2] Under the close supervision of the Monitor, the SISP broadly canvassed the market for potential sales or other restructuring transactions that would maximize value for all stakeholders and permit the Applicants to emerge as a going concern or as separate going concerns.

2. The Applicants now seek an approval and reverse vesting order in respect of one transaction that has emerged from the SISP as the Successful Bid for the AgMedica side of the business (the "**AgMedica ARVO"**). The relief sought includes:

(a) approving the AgMedica Transaction, as set out in the Shalcor Bid and the related subscription agreement from Shalcor (the DIP Lender), on behalf of the LP Purchaser, and 2596690 Ontario Inc. (AgriRoots, the first mortgagee), on behalf of the Facility Purchaser (together, the "**AgMedica Purchasers**"), to acquire Nursery, AgMedica, and 5047 Ontario (together, the "**AgMedica Purchased Entities**");

(b) adding 2650751 Alberta Ltd. (the "**AgMedica ResidualCo**") as Applicant to these CCAA proceedings;

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1 The facts underlying this application are set out in more detail in the Affidavit of Jason Cervi affirmed September 29, 2024 (the "**Ninth Cervi Affidavit**"). Capitalized terms not defined here have the same meaning as in the Ninth Cervi Affidavit. The background to these CCAA proceedings is described in additional detail in the Ninth Cervi Affidavit at paras. 13-18, 27-31, 43-56.

2 Ninth Cervi Affidavit at para. 54.

(c) granting the Releases;

(d) granting an extension of the stay of proceedings to October 31, 2024; and

(e) approving the sealing of the Fourth Confidential Cervi Affidavit.

3. The AgMedica Transaction should be approved. The SISP thoroughly canvassed the market, and the AgMedica Transaction represents the best available outcome: it was the only binding offer received for AgMedica, Nursery, and 5047 Ontario and is the only chance for a going-concern outcome for the benefit of employees, vendors, suppliers, and customers.

4. The AgMedica Transaction will not generate sufficient proceeds to satisfy claims with a priority lower than the DIP Loan and first secured mortgage. The SISP has shown that there is no value beyond the AgMedica Transaction and no economic basis on which the Applicants could present a plan to their creditors. The only other option is liquidation, likely through bankruptcy.

5. The Monitor supports approval of the AgMedica Transaction and the reverse vesting order structure, which is necessary to preserve the licenses needed to operate the highly-regulated cannabis businesses of the AgMedica Purchased Entities. Stakeholders are no worse off under the proposed reverse vesting order structure than they would be under a traditional vesting order. There is no viable alternative that would produce a more favourable economic result.

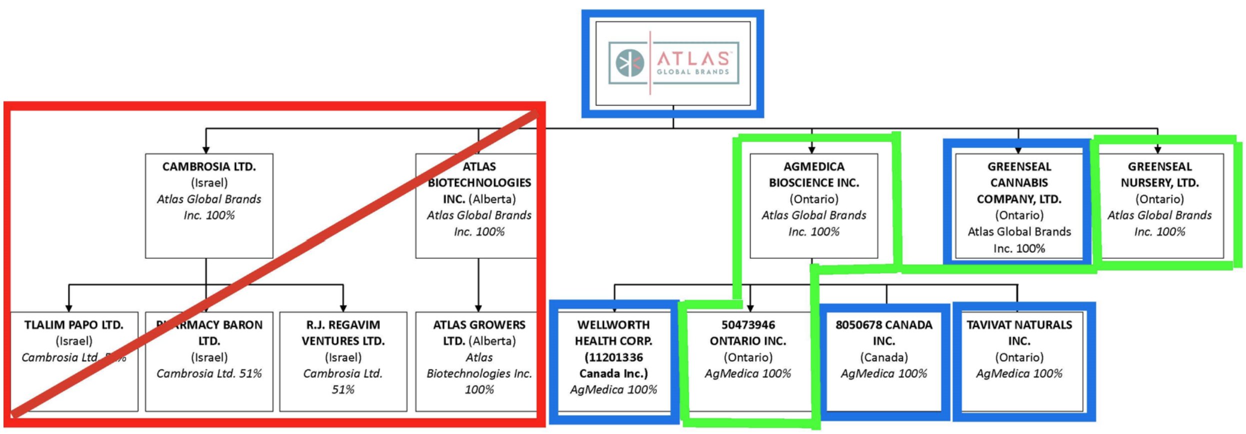
6. The AgMedica ARVO satisfies all applicable legal requirements and is in the best interests of the AgMedica Purchased Entities and their stakeholders. As such, it should be granted.

PART II - THE FACTS

A. Background

(a) *The Atlas Group*

7. The Atlas Group produces, distributes, and sells cannabis internationally and in Canada. Atlas' subsidiaries include AgMedica, a licensed producer of cannabis that principally operates in the international market, and owns several subsidiaries; 5047 Ontario, which owns the Chatham Facility; Nursery, a licensed cannabis nursery in Stratford that owns and manages over 1,000 cannabis plants' genetics; and GreenSeal, a licensed producer of cannabis operating in Stratford with a focus on the Canadian market and business-to-business sales, including to AgMedica. Wellworth, 8050 Canada, and Tavivat are also subsidiaries of AgMedica.[3] Atlas also owns subsidiaries in Alberta and Israel that are not Applicants in this proceeding (in red below).[4]



8. These submissions focus on the businesses of the AgMedica Purchased Entities, outlined in green. Wellworth, 8050 Canada, and Tavivat will be transferred to AgMedica ResidualCo. The Applicants hope to return to this Court soon to seek approval for a transaction involving GreenSeal, if ongoing negotiations are successful.

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[3] Ninth Cervi Affidavit at paras. 2, 7, 12.

[4] This chart is derived from Exhibit "A" to the Affidavit of Jason Cervi affirmed June 19, 2024.

(b) *The Liquidity Crisis*

9. The Applicants' CCAA filing was precipitated by a liquidity crisis caused by both Atlas-specific and industry-wide factors.[5] A September 2023 briefing note to the Minister of Finance explained: "it remains the case that after five years of legalization, there are no licensed producers of legal cannabis products that are consistently profitable." The briefing note pointed to structural issues with the excise tax regime, disclosing that as of June 30, 2023, excise tax arrears in the industry amounted to more than $235 million and other CRA debt (corporate income tax, payroll deductions, and GST/HST) amounted to almost $44 million. Consistent with industry experience, and hampered by general price compression, AgMedica accumulated $3.8 million in excise tax arrears, along with unpaid source deductions that the CRA has quantified as $2.1 million.[6]

10. In addition, the Atlas Group had entered into agreements with pharmacies and a distributor in Israel, but never received proceeds for millions of dollars of product ordered from AgMedica and GreenSeal then sold to customers, which materially affected its cash position.[7]

11. The tipping point for the Atlas Group occurred when the CRA began to take enforcement steps against GreenSeal in February 2024. The CRA garnished receivables that a factoring company ("**Stoke**") had purchased from GreenSeal, ultimately garnishing approximately $1.4 million.[8] In a letter dated May 27, 2024, Stoke demanded payment from GreenSeal of more than $1.8 million and sent a section 244 notice of its intention to enforce security.[9] The Atlas Group applied for protection under the CCAA.

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[5] Ninth Cervi Affidavit at para. 13.
[6] Ninth Cervi Affidavit at paras. 14-17, 33. The Source Deductions Liability continues to accrue interest, and includes a post-CCAA late remittance penalty of $16,190.42.
[7] Ninth Cervi Affidavit at paras. 18, 32.
[8] Ninth Cervi Affidavit at paras. 28, 31.
[9] Ninth Cervi Affidavit at para. 29.

(c) *AgMedica's Secured/Priority Debt Addressed by the AgMedica Transaction*

12. The mortgagee, AgriRoots, has a charge over the property of AgMedica, including the Chatham Facility, securing up to $16.5 million plus interest. AgriRoots also has a registered security interest in respect of the AgMedica Mortgage pursuant to the PPSA.[10] As of August 8, 2024, AgMedica owed AgriRoots up to $17,241,946.93 in principal and interest.[11] The interest arrears were $785,928.89 as of September 1, 2024.[12]

13. On July 2, 2024, this Court approved the DIP Facility in the amount of $5,000,000 and the Bridge Loan Facility in the amount of $3,750,000, both extended by Shalcor to all Applicants except GreenSeal. The Court granted a DIP Lender's Charge and Bridge DIP Charge with corresponding maximum amounts in respect of the Applicants' property (except GreenSeal's). Both charges ranked subsequent only to the Administration Charge. The Bridge Loan Facility has since been repaid and the DIP Facility has been fully drawn.[13]

14. As of August 6, 2024, 5047 Ontario owed $414,462.98 in property taxes on the Chatham Facility. These arrears are an Assumed Liability under the Subscription Agreement.[14]

B. The SISP

15. The SISP permitted the Applicants to pursue asset and/or share transactions, preserved the option of marketing AgMedica and GreenSeal separately or together, and allowed for credit bids.[15] As is described below, the Applicants, in collaboration with the Monitor, carried out the terms of the SISP in accordance with the SISP Approval Order (with modifications as appropriate).[16]

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[10] Ninth Cervi Affidavit at paras. 20-21.
[11] Ninth Cervi Affidavit at para. 22.
[12] Ninth Cervi Affidavit at para. 23.
[13] Ninth Cervi Affidavit at paras. 48-49.
[14] Affidavit of Jason Cervi, Affirmed October 3, 2024 (the "**Tenth Cervi Affidavit**") at para. 14.
[15] Ninth Cervi Affidavit at paras. 58-59.
[16] Ninth Cervi Affidavit at para. 55.

16. In relation to AgMedica, Shalcor and AgriRoots (included as "**Consultation Parties**") had rights to review Qualified Bids, but as Shalcor bid, it did not receive copies of or information about the competing bids. The Consultation Parties were involved in the SISP through discussions with management and prospective bidders regarding the structuring of bids.[17] The Monitor's involvement in the SISP was more robust than usual, given the absence of a sales advisor.[18]

17. Despite an active SISP, the Applicants received only one Qualified Bid for AgMedica and 5047 Ontario: Shalcor and AgriRoots proposed to acquire the AgMedica Purchased Entities by way of a Court-approved reverse-vesting transaction whereby the AgMedica Purchased Entities would be vested in the AgMedica Purchasers free and clear of encumbrances, and the excluded assets, contracts, and liabilities would be vested in AgMedica ResidualCo. The Monitor, in consultation with the Applicants, selected this proposal as the Successful Bid.[19]

C. The AgMedica Transaction Purchase Price

18. The purchase price is sufficient to (a) assume the DIP Facility, the AgriRoots Mortgage, and certain Assumed Liabilities, and (b) pay the CCAA Charges in priority to the DIP Charge and the Administrative Wind-Down Amount.[20] Charges behind the DIP Charge will be vested out, namely the Directors' Charge (no known obligations) and the KERP Charge.[21]

19. In exchange for the purchase price, the LP Purchaser will acquire all of the shares of Nursery and AgMedica and the Facility Purchaser will acquire all of the shares of 5047 Ontario.[22]

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[17] Ninth Cervi Affidavit at paras. 60-61.
[18] Ninth Cervi Affidavit at para. 57.
[19] Ninth Cervi Affidavit at paras. 68-73. Key terms of the Shalcor/AgriRoots Bid are summarized in the Ninth Cervi Affidavit at para. 71.
[20] Ninth Cervi Affidavit at para. 75.
[21] Tenth Cervi Affidavit at paras. 15, 17.
[22] Ninth Cervi Affidavit at para. 73.

PART III - THE ISSUES

20. The issue to be considered on this motion is whether this Court should grant the AgMedica ARVO including: (a) approving the AgMedica Transaction; (b) granting the Releases; (c) adding AgMedica ResidualCo as Applicant to these CCAA proceedings; (d) granting an extension of the stay of proceedings to October 31, 2024; and (e) sealing the Fourth Confidential Cervi Affidavit.

PART IV - THE LAW

A. The Transactions Should be Approved

(a) *The Applicable Legal Test is Well-Established*

21. In transactions effected by way of RVO: (a) the purchaser becomes the sole shareholder of the debtor company; (b) the debtor company retains the desired assets, including key contracts and permits; (c) the liabilities not desired by the purchaser are vested out and transferred, together with any excluded assets, to a newly incorporated entity (here, AgMedica ResidualCo); and (d) new shares are issued to the purchaser. The unwanted assets and liabilities vested in the separate entity are addressed through a bankruptcy or similar process.[23] The sale proceeds, if any, stand in place of the assets and are available to satisfy creditor claims per their pre-existing priority.

22. CCAA courts have confirmed their jurisdiction to approve an RVO by virtue of section 11 of the CCAA, which gives a CCAA court the authority to make any order that it considers appropriate in the circumstances.[24] Although CCAA courts have said that RVOs should not be the "norm," RVOs have been recognized as an appropriate way to achieve a going-concern outcome.[25]

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[23] *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at para. 27 [*Just Energy*], citing *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para. 85 [*Blackrock Metals*], leave to appeal ref'd 2022 QCCA 1073, leave to appeal ref'd 2023 CanLII 36969 (SCC).

[24] *Just Energy* at para. 29; *Harte Gold Corp (Re)*, 2022 ONSC 653 [*Harte Gold*] at paras. 36-37.

[25] *Blackrock Metals* at paras. 86, 96, 99; *Harte Gold* at para. 38; *Quest University Canada (Re)*, 2020 BCSC 1883 at paras. 160-173, leave to appeal ref'd 2020 BCCA 364.

23. In deciding whether to grant an RVO, courts have considered the factors in section 36 of the CCAA,[26] which addresses court approval of an asset sale outside the ordinary course of business. These include: (a) whether the process leading to the proposed disposition was reasonable in the circumstances; (b) whether the monitor approved the process leading to the proposed disposition; (c) whether the monitor filed with the court a report stating that in their opinion the disposition would be more beneficial to the creditors than a disposition under a bankruptcy; (d) the extent to which the creditors were consulted; (e) the effects of the proposed disposition on the creditors and other interested parties; and (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

24. These factors largely correspond to the *Soundair* criteria for approving an asset sale, which remain relevant in evaluating an RVO. These principles are: (i) whether sufficient effort had been made to obtain the best price and that the debtor had not acted improvidently; (ii) the interests of all parties; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in the working out of the process.[27] In approving traditional asset sales, courts have also indicated that they "will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the monitor in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient."[28]

25. In the RVO context, the court asks additional questions, namely: (a) why the RVO is necessary; (b) whether the RVO structure produces an economic result at least as favourable as any other viable alternative; (c) whether any stakeholder is worse off under the RVO structure than

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26 *Just Energy* at paras. 31-32; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 at para. 10 [*Acerus*].

27 *Just Energy* at paras. 62, 32, citing *Harte Gold* and *Royal Bank of Canada v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (CA).

28 *Sanjel Corporation (Re)*, 2016 ABQB 257 at para. 57. See also *Arrangement relatif à FormerXBC Inc. (Xebex Adsorption Inc.)*, 2023 QCCS 1818 at para. 13.

they would have been under any other viable alternative; and (d) whether the consideration reflects the importance and value of the licenses and permits being preserved under the RVO structure. [29]

(b) *The SISP was Fair, the Monitor Approved the Process, and the Creditors were Consulted*

26. The above legal criteria are satisfied here. As required by s. 36(3) of the CCAA and by the *Soundair* test, the SISP process was fair, approved by the Monitor, and included appropriate creditor consultation. Through the SISP, substantial efforts were made to obtain the best price.

27. The fairness of the SISP process is evidenced by the fact that it was approved by the Court on notice to the service list after a contested hearing. The process afforded potential bidders a reasonable opportunity to investigate and consider a potential purchase.[30] The Applicants conducted the SISP in accordance with the terms of the SISP Approval Order. The Monitor's involvement in the SISP was much more robust than usual given the absence of a sales advisor.[31] The Applicants and Monitor extensively canvassed the market, including by:

(a) sending the Teaser Letter to over 100 Known Potential Bidders and others;

(b) receiving executed NDAs from 15 Potential Bidders and providing each of these parties with access to the virtual data room facilitated by the Monitor;

(c) engaging in phone calls and meetings almost daily to answer questions or engage in negotiations with Potential Bidders; and

(d) conducting tours with five parties at the Chatham and Stratford Facilities.[32]

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29 *Acerus* at para. 12; *Harte Gold* at para. 38.

30 Ninth Cervi Affidavit at paras. 54-55; Third Report of the Monitor dated October 3, 2024 (the "**Third Report**") at para. 47.

31 Ninth Cervi Affidavit at para. 57; Third Report at para. 47.

32 Ninth Cervi Affidavit at para. 64.

28. In phase 1 of the SISP, the Applicants received five non-binding letters of intent, some of which proposed to acquire AgMedica, some in combination with other assets. All proposed a share sale with the assumption of certain assets and liabilities.[33] However, at the end of phase 2 of the SISP, the Shalcor bid was the only bid received for AgMedica, Nursery, and 5047 Ontario.[34]

(c) *The RVO Structure is Appropriate*

29. CCAA courts have approved RVOs where the debtor operated in a highly-regulated environment in which its existing permits, licences, or other critical rights were difficult or impossible to assign to a purchaser.[35] RVOs have been granted frequently in CCAA proceedings involving cannabis companies to transfer critical Health Canada and CRA licences.[36] A key component of the AgMedica Purchased Entities' value is their licences, which would be time-consuming and costly, if not impossible, to transfer to a purchaser under a traditional asset sale:[37]

(a) AgMedica holds a cannabis licence from Health Canada for the Chatham Facility, which permits it to cultivate, process, possess, and sell cannabis;

(b) Nursery holds a cannabis nursery licence from Health Canada for its facility in Stratford, which permits it to run a cannabis nursery and sell cannabis; and

(c) AgMedica and Nursery hold excise licences issued by the CRA, which permit them to stamp their products and collect excise taxes on behalf of the government.[38]

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[33] Ninth Cervi Affidavit at para. 66. These are described in additional detail in the Fourth Confidential Cervi Affidavit.

[34] Ninth Cervi Affidavit at para. 69.

[35] *Just Energy* at para. 34. See, *e.g.*, *Just Energy* at paras. 36-45; *Harte Gold* at paras. 70-76; *Acerus* at para. 13.

[36] See, *e.g.*, *Re Aleafia Health Inc. et al* (27 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Endorsement) at para. 5; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at paras. 12, 20; *MJardin Group, Inc., Re* (3 April 2023), Toronto CV-22-00682101-00CL (ONSC) (Endorsement) at paras. 16-17.

[37] Ninth Cervi Affidavit at para. 96; Third Report at para. 53.

[38] Ninth Cervi Affidavit at paras. 95-97.

30. Courts have also approved RVOs in circumstances where the debtor is a party to key agreements that would be difficult or impossible to assign to a purchaser, and where maintaining the existing legal entities would preserve tax attributes that would otherwise be lost.[39] If a traditional asset sale were implemented here, the Applicants would require consents to assign, re-establish or enter into new arrangements with commercial counterparties ranging from cannabis distribution agreements to leases and service contracts.[40] The RVO structure does not require such arrangements, thereby avoiding delay and complexity and preserving value.

31. The Monitor is of the view that the RVO structure is necessary to maximize value in this case. There is no other viable alternative that would produce a better economic result generally, nor for any particular stakeholder, as has been amply tested in the market.[41]

(d) ***The Transactions are Better for the Creditors Than a Sale Under a Bankruptcy***

32. Based on the outcome of the SISP and the appraisals contained in the Fourth Cervi Confidential Affidavit, the consideration to be received under the AgMedica Transaction is reasonable and fair, taking into account the market value of the assets.

33. Additionally, the Monitor believes that the AgMedica Transaction is more beneficial to creditors as a whole than a disposition under a bankruptcy. The AgMedica Transaction is the only viable option to preserve the AgMedica Purchased Entities as a going concern. Despite the considerable efforts made during the SISP to broadly canvass the market, the Applicants did not receive any other bids for the AgMedica Purchased Entities, much less higher bids.[42]

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39 *Just Energy* at para. 34.
40 Ninth Cervi Affidavit at para. 99.
41 Third Report at paras. 53-54.
42 Third Report at paras. 48, 50.

34. Shalcor, as DIP Lender, and AgriRoots are the only parties with an economic interest in the assets of the AgMedica Purchased Entities, as their first-ranking claims are at the top of the capital structure, subject only to the court-ordered Administration Charge. Although the AgMedica Transaction does not provide cash proceeds to satisfy creditors whose claims rank behind those of the AgMedica Purchasers, those creditors would also not receive any dividend in a bankruptcy. If the AgMedica Transaction is approved, certain such creditors stand to benefit from future continued revenue from the AgMedica Purchased Entities if they continue to supply them.[43]

(e) *Effect of the AgMedica Transaction on the CRA*

35. The Applicants acknowledge that the AgMedica Transaction does not provide proceeds to satisfy the claims of the CRA against the AgMedica Purchased Entities either in relation to unremitted source deductions for the pre-filing period or in relation to unpaid excise taxes.[44] However, as detailed below, this result is a function of the value of the Applicants' business, as fully tested under the SISP, and the priority of the CRA claims relative to the claims of the AgMedica Purchasers. In light of both factors, the CRA would be no better off under a bankruptcy.

36. AgMedica is subject to CRA claims for: (a) excise tax arrears of $3,842,970;[45] and (b) source deductions liability in the amount of $2,106,881.02.[46]

37. In relation to the excise tax arrears, the amounts owing by AgMedica are not secured. As the SISP fully canvassed the market and did not generate any transaction with enough value to satisfy unsecured claims, the CRA would be in exactly the same position in a bankruptcy in relation to the excise tax arrears as it would be under the AgMedica Transaction and the AgMedica ARVO.

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43 Third Report at para. 48.
44 Ninth Cervi Affidavit at para. 115.
45 Ninth Cervi Affidavit at paras. 16-17.
46 Ninth Cervi Affidavit at para. 33.

38. In relation to the source deductions liability, the CRA's claim ***ranks behind*** the first-ranking claims of Shalcor, as DIP Lender, and of AgriRoots under the AgriRoots Mortgage, a fact that the factum filed by the Attorney General of Canada fails to acknowledge. As a credit bid, the AgMedica Transaction does not provide cash proceeds to satisfy the lower-ranking CRA claim. There is no basis on which a credit bidding purchaser can be required to provide cash proceeds to satisfy lower priority claims; the credit bidder must only pay out higher ranking claims to obtain the secured assets in exchange for its debt. The *CannaPiece* decision referenced by the Attorney General, in which Justice Osborne "declined to approve an RVO that would have vested out the interest of a first-ranking secured creditor," is therefore distinguishable.[47]

39. Where employers fail to remit withheld source deductions, federal legislation accords statutory priority to such claims through mechanisms such as a deemed trust. Thus, in relation to withheld income tax, sections 227(4) and (4.1) of the *Income Tax Act*[48] (the "**ITA**") protect the Crown's interest by deeming unremitted amounts to be held in trust for His Majesty, notwithstanding any security interest in the amount or property deemed to be held in trust.[49] The CCAA generally recognizes the priority created for these amounts.[50]

40. However, despite the robust language of these protective provisions, there are limited circumstances in which the deemed trust for unremitted source deductions will cede priority to other higher-ranking creditors.[51] Here, the statutory deemed trust for the unremitted source

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47 CaseLines B-3-180, Factum of the Attorney General of Canada dated October 3, 2024 at para. 27, paraphrasing *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of CannaPiece Group Inc.*, 2023 ONSC 841.

48 *Income Tax Act,* R.S.C. 1985, c. 1 (5th Supp.).

49 ITA, ss. 227(4)-(4.1); *Canada v. Canada North Group Inc.*, 2021 SCC 30 [*Canada North*] at para. 33.

50 Section 37(2) of the CCAA exempts the deemed trusts created by sections 227(4) and (4.1) of the ITA, and the equivalent provisions under the *Canada Pension Plan* and *Employment Insurance Act*, from the nullification imposed on deemed Crown trusts under s. 37(1) of the CCAA: *Canada North* at para. 34; *Canada Pension Plan*, R.S.C. 1985, c. C-8, s. 23(3)-(4); *Employment Insurance Act*, S.C. 1996, c. 23, s. 86(2)-(2.1).

51 *Canada North* at para. 54.

deductions is subordinate to the AgriRoots Mortgage and DIP Facility, which are being paid out first under the AgMedica Transaction.[52]

41. With respect to the AgriRoots Mortgage, section 227(4.2) of the ITA provides that, for "purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest." A "prescribed security interest" is in turn defined by regulation:

> **2201(1)** For the purpose of subsection 227(4.2) of the Act, ***prescribed security interest***,… means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.[53]

42. The AgriRoots Mortgage encumbers land (the Chatham Facility) and charges AgMedica's property in an amount up to $16.5 million, of which $16 million was in place before AgMedica failed to remit the source deductions.[54] As such, it was registered "before the time the amount is deemed to be held in trust by the person."[55] As a result, the AgriRoots Mortgage is a "prescribed security interest" for the purposes of section 227(4.2).

43. Since the AgriRoots Mortgage was registered prior to the existence of the deemed trust, it takes priority over the deemed trust by the terms of the ITA. It is not a higher-ranking claim that would have to be satisfied by AgriRoots before it could acquire the AgMedica Purchased Entities by means of a credit bid. Moreover, the AgriRoots Mortgage would enjoy this priority status whether the Applicants are in a CCAA proceeding or a bankruptcy.

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52 Ninth Cervi Affidavit at para. 75.

53 *Income Tax Regulations*, C.R.C., c. 945, s. 2201(1).

54 Ninth Cervi Affidavit at para. 34; Tenth Cervi Affidavit at para. 11.

55 *Canada North* at para. 101, footnote 1, per Karakatsanis J., concurring, citing Regulatory Impact Analysis Statement, SOR/99-322, *Canada Gazette*, Part II, vol. 133, No. 17, August 18, 1999, at pp. 2041-42.

44. With respect to Shalcor, the DIP Charge is, by the terms of the TARIO, a first-ranking claim over the assets of the AgMedica Purchased Entities. The Supreme Court of Canada in *Canada North* recognized that a priority ranking DIP charge ordered by a CCAA Court pursuant to its jurisdiction under the CCAA can take priority over deemed trusts for unremitted source deductions.[56] The super-priority charges in *Canada North*, which included a financing charge in favour of an interim lender, were granted using language that substantially mirrors the terms of the TARIO with respect to the DIP Lender's Charge over AgMedica's property.[57] As such, Shalcor's claim as DIP Lender has priority over the CRA claim for unremitted source deductions.

45. The CRA's consent is not required before the Applicants can transfer the unremitted source deduction liability to ResidualCo as an Excluded Liability. This step is equivalent to what occurs in a traditional asset sale – namely, the transfer to the purchaser of the assets and liabilities that a purchaser wishes to assume, leaving behind the liabilities that it does not. In this case, the CRA's claims are being left behind because there is no value in excess of the higher-ranking claims to satisfy its claims; the transfer to AgMedica ResidualCo is merely the mechanism by which this occurs in an RVO structure. Whether the transaction is structured as an AVO or an RVO, the AgMedica Purchasers cannot be required to increase their price or to provide cash proceeds to satisfy a lower-ranking claim.

46. Section 6(3) of the CCAA does not change this outcome. Section 6(3) provides that a CCAA Court cannot sanction a plan of compromise or arrangement unless it provides for payment in full, within six months, of any unremitted source deductions. On its plain wording, this provision applies only to plans of compromise or arrangement. There is no plan proposed for the AgMedica

56 *Canada North* at para. 4.
57 *Canada North* at paras. 5-6; *c.f. Atlas Global Brands Inc., Re* (9 July 2024), Toronto CV-24-00722386-00CL (ONSC) (Third Amended And Restated Initial Order) at paras. 54, 56, 58.

Purchased Entities and there is no economic basis on which such a plan could be viable, given the results of the SISP. As a result, contrary to the Attorney General's submissions, there is no inconsistent result. The CCAA permits different approaches to achieving a restructuring: it is well-accepted that a debtor company can restructure its affairs by means of transactions other than a plan – such as a traditional asset sale or RVO.[58] There is no authority requiring that every approach be "source deduction neutral" when section 6(3) references only a plan and not the other well-known restructuring approaches.

47. In assessing prejudice to the CRA, the proper benchmark is whether the CRA would receive better treatment under a bankruptcy, not whether the CRA would receive more favourable terms under a hypothetical plan that does not exist and would not be feasible given the results of the SISP. The section 36 and *Harte Gold* factors evaluate potential RVOs against a bankruptcy or other viable alternatives. There are no other viable alternatives. Here, the Monitor is satisfied that the transfer of AgMedica's source deduction liability to AgMedica ResidualCo is not a worse outcome for the CRA than would be expected in a bankruptcy.[59]

48. In addition, the ARVO contains certain protections to ensure that:

(a) Pre-filing arrears and refunds are vested in AgMedica ResidualCo and post-filing arrears (if any) and refunds stay with the AgMedica Purchased Entities.

(b) Any claims against the directors and officers in respect of unpaid taxes are channelled to insurance and the stay is lifted on a limited basis to permit the CRA

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[58] See, *e.g.*, the rise of liquidating CCAA proceedings: *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 42-45.

[59] Third Report at para. 50.

to complete the technical requirements that the CRA must meet to assert such claims.

49. The ARVO mechanism does not harm the CRA: the CRA would be in the same position in a traditional asset sale scenario and in a bankruptcy.

(f) *The Proposed Transaction is in the Best Interests of the Stakeholders*

50. Any alleged prejudice to the CRA does not outweigh the interests of all other stakeholders in a going-concern outcome, a key factor under section 36(3)(e) of the CCAA.

51. The AgMedica Transaction would permit the Applicants to continue operations as a going concern. The AgMedica Purchasers intend to keep substantially all of the AgMedica Purchased Entities' approximately 140 current employees. A substantial number of the Applicants' suppliers of goods and services would be able to maintain their business relationships with the Applicants. The AgMedica Transaction would also ensure the continuity of supply in provinces where the Applicants are part of the provincial supply chain.[60]

B. The Releases Under the Proposed RVO are Appropriate

52. Third party releases (*i.e.* releases in favour of parties other than the CCAA debtor company) have been granted in cases involving RVOs. As the Quebec Superior Court noted in *Blackrock Metals*, it "is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction."[61]

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[60] Ninth Cervi Affidavit at para. 101.
[61] *Blackrock Metals* at para. 128.

53. The same test for granting third party releases in a CCAA plan applies to a release in an RVO. The Court must ask: (a) whether the parties to be released were necessary to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtors as well as the creditors generally.[62] It is not necessary for each of these factors to apply in order for the proposed release to be granted.[63]

54. The AgMedica ARVO provides for releases (the "**General Post-Filing Releases**") effective upon the filing of the Monitor's Closing Certificate and limited to matters involving these CCAA proceedings and the Transactions[64] for various parties, namely:

(a) the current directors, officers, employees, consultants, legal counsel and advisors of the Applicants;

(b) the current directors, officers, employees, consultants legal counsel and advisors to AgMedica ResidualCo;

(c) the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, consultants, advisors and assignees;

(d) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors;

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[62] *Blackrock Metals* at para. 130, citing *Harte Gold* at paras. 78-86, citing *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54, and the test established in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*., 2008 ONCA 587, leave to appeal ref'd 2008 CanLII 46997 (SCC).

[63] *Re Green Relief Inc.*, 2020 ONSC 6837 at para. 28 [*Green Relief*]; *Harte Gold* at para. 80.

[64] Ninth Cervi Affidavit at paras. 103-106.

(e) Shalcor Management Inc., in its capacity as the DIP Lender;

(f) 2596690 Ontario Inc. (operating as AgriRoots Capital Management Inc.), in its capacity as mortgagee; and

(g) the Purchasers, in their capacity as the Successful Bidder.

55. The ARVO also provides for releases of the current directors and officers of the Purchased Entities as well as two directors of Atlas, Trevor Henry and Peter Van Mol (collectively, the "**Released D&Os**") from claims in respect of the Purchased Entities, including claims for unpaid source deductions and excise taxes, relating to the pre-filing period.

56. None of the releases waive or bar any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released D&Os; that is not permitted to be released pursuant to section 5.1(2) of the CCAA; or that is an Insured Claim.[65]

57. The Releases would achieve certainty and finality in the most efficient and appropriate manner given the circumstances. The Releases are critical to the Applicants' restructuring and necessary to ensure that the AgMedica Transaction closes.[66] The Monitor observed that each Released Party has meaningfully contributed to the AgMedica Transaction and, more generally, to the Applicants' successful restructuring.[67] The General Releases are similar to other releases granted in numerous RVO transactions in favour of the debtor, its current directors and officers, the monitor and its counsel, and the purchaser of the business and its directors and officers.[68]

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65 Ninth Cervi Affidavit at paras. 107-108.
66 Ninth Cervi Affidavit at para. 109.
67 Third Report at para. 61.
68 *Re Aleafia Health Inc. et al* (30 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Approval and Reverse Vesting Order and Supplementary Endorsement). See more generally *Harte Gold* at paras. 78-86; *Blackrock Metals* at paras. 125-137.

58. The Released D&Os are current and certain former directors of the Applicants who have made significant and material contributions to enable the AgMedica Purchased Entities to emerge from these CCAA proceedings as a going concern. The former directors contributed to these CCAA proceedings in their capacity as current employees. No one is receiving any benefit from the KERP.[69] They also risk personal liability for excise tax unpaid during their tenure, along with the portion of the source deduction liability attributable to their service on the AgMedica board.[70]

59. Although the Released D&Os will be released from personal liability for the unpaid excise tax and source deduction liability attributed to their tenure, this release is subject to a key limitation. Any person, including the CRA, is permitted to pursue an action in respect of any Insured Claim under any insurance policy maintained by any of the Purchased Entities or ResidualCo, and, to the extent liability is established, is entitled to recover solely from those proceeds, if any. There remains a potential avenue for some recovery in respect of certain claims against the current and former directors and officers by "channelling" to any available insurance,[71] a mechanism that has been employed in other CCAA proceedings involving RVOs and AVOs.[72] The CRA proposed language that is reflected in the most recent ARVO that will facilitate their access to any available insurance.

C. The ResidualCo Should be Added as Applicants

60. To complete the AgMedica Transaction, AgMedica ResidualCo must become an Applicant in these proceedings. This step is typical in RVO transactions.

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69 Ninth Cervi Affidavit at para. 110.

70 See Ninth Cervi Affidavit at paras 112-114, which sets out the maximum exposure for each director.

71 Ninth Cervi Affidavit at para. 118. The directors and officers' two insurance policies are named at para. 117.

72 See, *e.g.*, *Re Aleafia Health Inc. et al* (1 March 2024), Toronto CV-23-00703350-00CL (ONSC) (CCAA Termination Order and Endorsement); *Green Relief* at paras. 58-73, 76; *MPX International Corporation (Re)*, 2022 ONSC 7152 (approving a CCAA Termination Order); *Nexii Building Solutions Inc. et al (Re)* (28 June 2024), Vancouver 5240195 (BCSC) (Ancillary Order) at para. 14.

61. The CCAA applies to a "debtor company" or affiliated debtor companies where the total claims against the debtor/affiliated debtors exceed $5 million.[73] A "debtor company" means, *inter alia*, a company that is insolvent.[74] Whether a company is insolvent is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and Insolvency Act* (the "**BIA**") and the expanded concept of insolvency adopted by this court in *Stelco*.[75]

62. Upon the transfer of the excluded contracts, assets, and liabilities to AgMedica ResidualCo, the realizable value of its assets will be insufficient to satisfy all of its obligations. AgMedica ResidualCo will therefore become "insolvent" under the BIA test and face the kind of imminent liquidity crisis that satisfies the expanded *Stelco* test, making it a "debtor company" to which the CCAA applies.[76] AgMedica ResidualCo should therefore be added as an Applicant in these CCAA proceedings and the style of cause should be amended accordingly.

D. The Stay of Proceedings Should be Extended

63. This Court is authorized to extend a CCAA stay pursuant to section 11.02(2) of the CCAA, provided that the two considerations outlined in section 11.02(3) are satisfied. These are: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of the section 11.02(3) factors are satisfied here.

64. The Applicants have acted in good faith and with due diligence to communicate with all stakeholders. Since the SISP Approval Order, they have been carrying out the terms of the SISP

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73 CCAA, s. 3(1).

74 CCAA, s. 2.

75 *Re Just Energy Corp*., 2021 ONSC 1793 at paras. 49-50 and *Laurentian University of Sudbury*, 2021 ONSC 659 at paras. 30-32, citing *Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299 (ONSC) at para. 26 ("a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring").

76 Ninth Cervi Affidavit at para. 120.

in pursuit of a transaction, including assisting with marketing and other key steps, communicating with various stakeholders, and ensuring that the business operates as a going concern.[77]

65. The extension of the stay of proceedings is necessary and appropriate to provide the Applicants with continued breathing space while they attempt to maximize value for the benefit of their stakeholders through the CCAA proceedings by, among other things, concluding the AgMedica Transaction.[78] Further, no creditor will suffer material prejudice as a result of the extension of the stay of proceedings.[79] Finally, the Cash Flow Forecast shows that the Applicants will have sufficient liquidity to fund obligations and costs of the CCAA proceedings during the proposed stay extension period.[80]

E. The Fourth Confidential Cervi Affidavit Should be Sealed

66. Pursuant to s. 137(2) of the *Courts of Justice Act*, the Applicants request that the Fourth Confidential Cervi Affidavit be treated as confidential and sealed, and not form part of the public record. In deciding whether to grant a sealing order, courts consider the following factors:[81]

(a) Serious risk to an important public interest: This Court has recognized the public's interest in maintaining the confidentiality of notices of intention to bid, given the legitimate risk to the commercial interests of SISP participants, the debtor company, and the debtor's stakeholders should the transaction fail to close.[82] The Fourth Confidential Cervi Affidavit contains commercially sensitive information that could taint the SISP if disclosed.

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77 Ninth Cervi Affidavit at para. 55.
78 Ninth Cervi Affidavit at para. 123.
79 Ninth Cervi Affidavit at para. 124.
80 Ninth Cervi Affidavit at para. 125.
81 *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.
82 *Just Energy* at para. 72.

(b) Lack of a reasonable alternative to prevent this risk: There is no reasonable alternative to the sealing order that would protect the confidentiality of the materials that are sought to be kept confidential in the Fourth 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."[83] The proposed sealing order applies only to limited materials. The benefits of the proposed sealing order in protecting the SISP outweigh any negative effects.

PART V - RELIEF REQUESTED

67. The Applicants respectfully request that this Court grant the AgMedica ARVO and the related requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of October, 2024.

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

Lawyers for the Applicant

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

SCHEDULE "A"

LIST OF AUTHORITIES	
Cases	
1.	*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10
2.	*Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
3.	*Arrangement relatif à FormerXBC Inc. (Xebex Adsorption Inc.)*, 2023 QCCS 1818
4.	*Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, leave to appeal ref'd 2022 QCCA 1073, leave to appeal ref'd 2023 CanLII 36969 (SCC)
5.	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, leave to appeal ref'd 2008 CanLII 46997 (SCC)
6.	*Atlas Global Brands Inc., Re* (9 July 2024), Toronto CV-24-00722386-00CL (ONSC) (Third Amended And Restated Initial Order)
7.	*Canada v. Canada North Group Inc.*, 2021 SCC 30
8.	*Harte Gold Corp (Re)*, 2022 ONSC 653
9.	*In the Matter of the Companies' Creditors Arrangement Act and in the Matter of CannaPiece Group Inc.*, 2023 ONSC 841
10.	*Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
11.	*Laurentian University of Sudbury*, 2021 ONSC 659
12.	*Lydian International Limited (Re)*, 2020 ONSC 4006
13.	*MJardin Group, Inc., Re* (3 April 2023), Toronto CV-22-00682101-00CL (ONSC) (Endorsement)
14.	*MPX International Corporation (Re)*, 2022 ONSC 7152 and CCAA Termination Order
15.	*Nexii Building Solutions Inc. et al (Re)* (28 June 2024), Vancouver 5240195 (BCSC) (Ancillary Order)
16.	*Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753
17.	*Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934
18.	*Quest University Canada (Re)*, 2020 BCSC 1883, leave to appeal ref'd 2020 BCCA 364
19.	*Re Aleafia Health Inc. et al* (27 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Endorsement)

LIST OF AUTHORITIES	
20.	*Re Aleafia Health Inc. et al* (30 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Approval and Reverse Vesting Order and Supplementary Endorsement).
21.	*Re Aleafia Health Inc. et al* (1 March 2024), Toronto CV-23-00703350-00CL (ONSC) (CCAA Termination Order and Endorsement)
22.	*Re Green Relief Inc.*, 2020 ONSC 6837
23.	*Re Just Energy Corp.*, 2021 ONSC 1793
24.	*Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (CA)
25.	*Sanjel Corporation (Re)*, 2016 ABQB 257
26.	*Sherman Estate v. Donovan*, 2021 SCC 25
27.	*Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299 (ONSC)
Other Sources	
28.	Regulatory Impact Analysis Statement, SOR/99-322, *Canada Gazette*, Part II, vol. 133, No. 17, August 18, 1999

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

***Canada Pension Plan*, R.S.C. 1985, c. C-8**

Where amount deducted not remitted

23 (3) Where an employer has deducted an amount from the remuneration of an employee as or on account of any contribution required to be made by the employee but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the Income Tax Act) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the Income Tax Act) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (3) to be held by an employer in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

> **(a)** to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and
>
> **(b)** to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

…

***Companies' Creditors Arrangement Act*, R.S.C. 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.

…

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

5.1 (2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

…

Restriction — certain Crown claims

6(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a provincial pension plan as defined in that subsection.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

…

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.

…

Factors to be considered

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

…

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision"), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

(a) that law of the province imposes a tax similar in nature to the tax imposed under the Income Tax Act and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a provincial pension plan as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

….

***Courts of Justice Act*, R.S.O. 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.

…

***Employment Insurance Act*, S.C. 1996, c. 23**

Amounts deducted and not remitted

86 (2) Where an employer has deducted an amount from the remuneration of an insured person as or on account of any employee's premium required to be paid by the insured person but has not remitted the amount to the Receiver General, the employer is deemed, notwithstanding any security interest (as defined in subsection 224(1.3) of the Income Tax Act) in the amount so deducted, to hold the amount separate and apart from the property of the employer and from property held by any secured creditor (as defined in subsection 224(1.3) of the Income Tax Act) of that employer that but for the security interest would be property of the employer, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(2.1) Notwithstanding the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection (2) to be held by an employer in trust for Her Majesty in the manner and at the time provided under this Act, property of the employer and property held by any secured creditor (as defined in subsection 224(1.3) of the *Income Tax Act*) of that employer that but for a security interest (as defined in subsection 224(1.3) of the *Income Tax Act*) would be property of the employer, equal in value to the amount so deemed to be held in trust is deemed

> (a) to be held, from the time the amount was deducted by the employer, separate and apart from the property of the employer, in trust for Her Majesty whether or not the property is subject to such a security interest, and
>
> (b) to form no part of the estate or property of the employer from the time the amount was so deducted, whether or not the property has in fact been kept separate and apart from the estate or property of the employer and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property or in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

…

***Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.)**

Trust for moneys deducted

227 (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of security interest

(4.2) For the purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest.

…

***Income Tax Regulations*, C.R.C., c. 945**

2201 (1) For the purpose of subsection 227(4.2) of the Act, ***prescribed security interest***, in relation to an amount deemed by subsection 227(4) of the Act to be held in trust by a person, means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.

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.

APPLICATION OF ATLAS GLOBAL BRANDS INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANTS
(APPROVAL AND REVERSE VESTING ORDER)

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