

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-064718-246

DATE: October 15, 2024

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

VALEO PHARMA INC.
and
VPI PHARMACEUTICALS INC./VPI PHARMACEUTIQUES INC.
and
VALEO PHARMA CORP
Applicants
v.
ERNST & YOUNG INC.
Monitor
and
SAGARD HEALTHCARE PARTNERS (DELAWARE) LP
and
ACCORD FINANCIAL INC.
Secured Creditors

JUDGMENT
(APPLICATION FOR AN AMENDED INITIAL ORDER UNDER THE CCAA¹ AND
ANCILLARY ORDERS)

¹ *Companies Creditors' Arrangement Act*, RSC 1985, c C-36.

[1] On September 30, 2024, the Applicants came before this Court seeking an initial order under the CCAA to stay proceedings, authorize interim financing, appoint a Monitor, and charge the Applicants' assets while they propose a restructuring plan to the Court.

[2] The Court issued an initial CCAA order on October 1, 2024. In a written decision dated October 2, the Court explained its reasons for the order and its decision to authorize an interim loan by Sagard to Valeo of US\$750,000 (the "DIP Loan") and the creation of a super priority charge ("DIP Charge") of \$1.2M in favour of Sagard as the DIP lender.

[3] In its October 2 decision the Court held that the DIP Charge in favour of Sagard did not cause prejudice to Accord, a secured creditor of Valeo, because the value of Valeo's inventory and account receivables, on which Accord holds first ranking security, was superior to the amount of the DIP Charge and Accord's outstanding \$3.2M loan.

[4] Nevertheless, the Court indicated that it would be reluctant to authorize an increase to the DIP Charge if the effect would be to materially prejudice Accord's first ranking security on Valeo's inventory and receivables and its ability to recover its loan upon the sale or liquidation of Valeo's assets.

[5] On October 11, 2024, the parties returned to Court seeking an amended initial order and extension of the stay of proceedings.² In its application Valeo seeks an order authorizing it to conduct a sales and investment solicitation process (SISP) over the next thirteen weeks. It asks to increase the amount of the administration charge in favour of the insolvency professionals, and for authorization to implement a key employee retention plan (KERP). Notably, Valeo seeks the Court's authorization to borrow up to US\$5M under the DIP Loan and to increase Sagard's DIP Charge to \$8M.

[6] Accord opposes the proposed increase to the DIP Charge, arguing that a higher DIP Charge would prejudice Accord's ability to recover its \$3.2M loan upon an eventual sale or liquidation of Valeo's inventory and accounts receivable, the company's only tangible assets of value.

[7] After hearing the parties and considering the evidence, the Court concludes that the proposed increase to the DIP Charge will not result in material prejudice to Accord. Furthermore, the risk that Accord will not be fully repaid as a result of the increased DIP Charge is outweighed by other factors that favour allowing for an orderly sale of Valeo's business and assets.

[8] On October 11, the Court issued the orders sought by Valeo, concluding that they were appropriate and furthered the objectives of the CCAA. These are the reasons for dismissing Accord's opposition.

[9] First, Accord's opposition is dismissed because it appears that Valeo will maintain a higher level of inventory and accounts receivable during the next thirteen weeks than was

² S. 11.02(1) CCAA.

initially anticipated. In his pre-filing report dated September 27, the Monitor initially estimated that the combined value of Valeo's inventory and accounts receivable during the thirteen-week SISP period would be approximately \$8M. Upon further analysis, he now expects the combined value of these assets, plus cash on hand, to vary between \$10M and \$13M during the period. Mr Pascal Tougas, Valeo's CFO, confirmed this estimate, explaining that the company expects an increase in its business activity in the coming months.

[10] Higher levels of inventory and receivables provide a greater assurance to Accord that there will be tangible assets to pay the DIP Charge and the Accord loan at the end of the SISP period.

[11] Second, the Monitor has reviewed expressions of interest from potential purchasers of Valeo's business that leads him to believe the company's value exceeds that of its inventory and receivables. Given the apparent interest in Valeo's business, it is the Monitor's view that a liquidation scenario is unlikely and that a sale of the business could generate sufficient sums to repay the DIP Charge and Accord's secured loan.

[12] Third, in its application for an amended initial order Valeo offers safeguards to Accord. Valeo undertakes not to draw upon the DIP Loan, and Sagard undertakes not to advance DIP funds, if at any time the combined amount of the DIP Loan and the Accord loan exceeds the aggregate value of Valeo's cash, inventory and receivables, minus \$1M. These undertakings provide a safety cushion to Accord.

[13] Valeo has further undertaken to immediately advise Accord and the Court in the event the company anticipates that the combined DIP Loan and Accord loan will exceed the above-mentioned ceiling.

[14] Fourth, Valeo will deliver a weekly report to Accord detailing its actual financial results, as opposed to the Monitor's forecasted results. Valeo proposes to return to Court in a little over a month, on November 15, to report on its activities and the SISP process.

[15] Finally, under the terms of the SISP the Monitor has undertaken to allocate the purchase price of an accepted bid to Valeo's assets according to their respective value. This allocation should ensure that an eventual offer will not attribute an unfair value to Valeo's inventory and accounts receivable over which Accord has first ranking security.

[16] In the Court's view, these measures reduce the risk that Accord's secured loan will not be repaid at the end of a SISP. In this regard, the Court accepts the Monitor's opinion that the measures effectively offset any greater risk to Accord through an increase to the DIP Charge.

[17] The Court recognizes that the proposed measures do not eliminate all risk or leave Accord as secure as it would be if its first ranked security were not primed by the DIP Charge. However, the proposed measures provide substantial protections to Accord.

[18] The Court disagrees with Accord that the increased DIP Charge constitutes a “material prejudice” to Accord within the meaning of s. 11.2(4)(f) CCAA. The risk of non-payment is future and hypothetical, while material prejudice is present and certain. In this case, the potential and measured risk to Accord does not rise to the threshold of material prejudice.

[19] When considering whether to increase the DIP Loan and DIP Charge the Court must weigh all relevant factors. In this case, the risk to Accord through an increased DIP Charge is outweighed by the clear advantage to stakeholders in permitting Valeo to receive interim financing and continue its business operations while it conducts a supervised sales process. While the SISP offers a potentially greater recovery for all creditors, a liquidation would only benefit Accord. Moreover, the advantages go beyond those to creditors: during the sales process, and possibly thereafter, Valeo’s jobs will be maintained, its suppliers will be paid, and Valeo’s pharmaceutical products will continue to be found on pharmacy shelves.

FOR THESE REASONS, THE COURT:

[20] **GRANTS** the application for an Amended and Restated Initial Order and Order Approving the Sale and Investment Solicitation Process, dated October 9, 2024;

[21] **WITHOUT** costs.

David R.
Collier

Signature
numérique de
David R. Collier
Date : 2024.10.15
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DAVID R. COLLIER. J.S.C.

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Hearing date: October 11, 2024