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 28, 2024

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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. Pursuant to an order dated October 4, 2024, this Court approved the sale of one part of the Applicants' business (the "**AgMedica ARVO**"). In addition, the Court appointed Steinberg Advisory Corp. as CRO of GreenSeal.

3. The Applicants now seek an approval and reverse vesting order in substantially similar form as the AgMedica ARVO but in respect of the GreenSeal side of the business (the "**GreenSeal ARVO**"). The Applicants also seek the Monitor's Enhanced Powers & CCAA Termination Order.

4. The GreenSeal Transaction should be approved. The SISP thoroughly canvassed the market, and the GreenSeal Transaction represents the best available outcome: it is the best chance for a going-concern outcome for the benefit of employees, vendors, suppliers, and customers. The SISP has shown that there is no value beyond the GreenSeal Transaction, which will not generate sufficient proceeds to satisfy claims with a priority lower than those of YNCU and Stoke.

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1 The facts underlying this application are set out in more detail in the Affidavit of Jason Cervi affirmed October 24, 2024 (the "**Twelfth Cervi Affidavit**"). Capitalized terms not defined here have the same meaning as in the Twelfth Cervi Affidavit.

2 Affidavit of Jason Cervi affirmed on September 29, 2024 ("**Ninth Cervi Affidavit**") at para. 54.

5. The Monitor supports approval of the GreenSeal Transaction and the reverse vesting order structure, which is necessary to preserve the licences needed to operate GreenSeal's highly regulated cannabis businesses. 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. The GreenSeal ARVO is in the best interests of GreenSeal and its stakeholders and should be granted.

6. After the GreenSeal Transaction closes, these CCAA proceedings will have served their purpose. The business and operations of the Applicants will have been sold, leaving behind no material assets or ongoing business. The proposed Monitor's Enhanced Powers & CCAA Termination Order should be granted so that these CCAA proceedings can be brought to an orderly close, providing certainty and finality for all parties after the successful sale process.

PART II - THE FACTS

A. Background

(a) *The Atlas Group*

7. The Atlas Group produces, distributes, and sells cannabis internationally and in Canada.[3] The following chart displays its various subsidiaries.[4]

8. The subject of this motion is GreenSeal (outlined in purple, below), a licensed producer of cannabis operating in Stratford with a focus on the Canadian market and business-to-business sales. Atlas acquired GreenSeal on April 28, 2023, pursuant to a share purchase agreement. Other subsidiaries include AgMedica, 5047 Ontario, and Nursery (outlined in green), which were the

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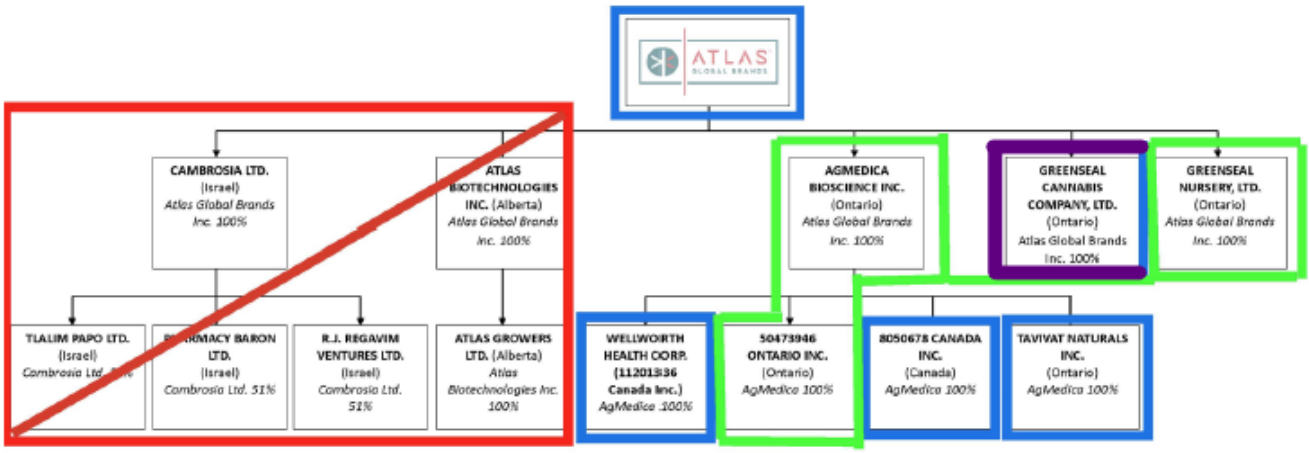
[3] The background to these proceedings is set out more fully in the Ninth Cervi Affidavit at paras. 13-18, 27-31, and 43-56.

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

subject of the AgMedica ARVO.[5] Atlas also owns subsidiaries in Alberta and Israel that are not Applicants in this CCAA proceeding (outlined in red).



(b) ***GreenSeal's Significant Secured/Priority Debt***

(i) ***The YNCU Loan***

9. On July 4, 2022, GreenSeal entered into a Commitment Letter with YNCU, pursuant to which YNCU agreed to provide to GreenSeal three credit facilities in the aggregate amount of $5,346,485 (the "**YNCU Loan**"),[6] of which an estimated $5,265,986.30 remained outstanding as of October 1, 2024.[7] As security for GreenSeal's obligations under the YNCU Loan, among other things, pursuant to a charge registered on March 9, 2021 and amended on August 16, 2022, GreenSeal granted a charge in the amount of $5.4 million over the Stratford Facility to YNCU and a fixed and floating charge over the Real Property (as defined in the YNCU Loan) and its associated assets and a subordinate fixed and floating charge over all of the assets and undertakings of GreenSeal subsequent only to then-existing charges (the "**YNCU Charge**").[8]

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5 Twelfth Cervi Affidavit at para. 8; Ninth Cervi Affidavit at para. 5.
6 Twelfth Cervi Affidavit at para. 13.
7 Twelfth Cervi Affidavit at para. 64.
8 Twelfth Cervi Affidavit at para. 16.

(ii) *The GreenSeal RPA*

10. On June 7, 2023, Stoke and GreenSeal entered into the GreenSeal RPA, pursuant to which Stoke agreed to buy certain of GreenSeal's Eligible Receivables, and GreenSeal agreed to grant it a continuing security interest in certain collateral.[9]

11. On September 9, 2023, GreenSeal and Stoke amended the GreenSeal RPA to create an "Additional Facility" under which GreenSeal could request an advance of credit from Stoke against Eligible Purchase Orders, which would then be added to the outstanding obligations under the GreenSeal RPA.[10] GreenSeal also granted Stoke a first-priority interest over the Eligible Purchase Orders and related collateral.[11]

12. GreenSeal owed Stoke approximately $1,869,707 as of June 20, 2024.[12]

(iii) *Excise Tax Liability*

13. As described in further detail in the Ninth Cervi Affidavit, the Applicants suffered a liquidity crisis before these CCAA proceedings caused by both Atlas-specific and industry-wide factors. Consistent with the cannabis industry's experience with structural issues with the excise tax regime, and hampered by general price compression,[13] GreenSeal accrued an excise tax liability of $2,775,839 by June 20, 2024.[14] On March 26, 2024, in connection with GreenSeal's excise tax arrears, the CRA registered a lien for $1,153,739.90 against the Stratford Facility (the "**Excise Lien**") pursuant to s. 288(4-5) of the *Excise Act, 2001*, S.C. 2002, c. 22.[15]

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9 Twelfth Cervi Affidavit at paras. 19-20.
10 Twelfth Cervi Affidavit at para. 22.
11 Twelfth Cervi Affidavit at para. 23. GreenSeal's factoring arrangements with Stoke are described in additional detail in the Twelfth Cervi Affidavit at paras. 18-34.
12 Twelfth Cervi Affidavit at para. 26.
13 Ninth Cervi Affidavit at paras. 13-18.
14 Twelfth Cervi Affidavit at para. 47.
15 Twelfth Cervi Affidavit at para. 46.

14. The CRA issued CRA Requirements to garnish approximately $1,406,523.75 in receivables owing to GreenSeal, eroding Stoke's collateral for GreenSeal's debt. 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.[16]

(c) ***The CCAA Proceedings***

15. In June 2024, Stoke and YNCU brought separate applications asking the Court to appoint a receiver over certain assets of GreenSeal, which the Court adjourned to grant GreenSeal one shot at its proposal to participate in the Atlas SISP under the CCAA.[17]

16. In subsequently granting the TARIO, the Court permitted GreenSeal to use payments received on account of Stoke Purchase Orders to fund ongoing operations during these CCAA proceedings, but instituted certain measures to protect Stoke. The Court ordered GreenSeal to pay Stoke Advance Repayments under the GreenSeal RPA in a total amount not exceeding $501,215 plus $98,630 in interest.[18] To secure the Stoke Receipts used by GreenSeal, Stoke was granted the Stoke Receivables Charge (to be reduced by the Advance Repayments made) on the GS A/R, cash on hand of $1.175 million, and the Information Liaison fees.[19] The Court also appointed Steinberg Advisory Corp. as Information Liaison.[20]

17. On July 26, 2024, the Court granted the SISP Approval Order, which preserved the option of marketing AgMedica and GreenSeal separately or together, and allowed for credit bids.[21]

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16 Ninth Cervi Affidavit at paras. 16, 28-31.
17 Twelfth Cervi Affidavit at para. 43.
18 Twelfth Cervi Affidavit at para. 35.
19 Twelfth Cervi Affidavit at para. 38.
20 Twelfth Cervi Affidavit at para. 39.
21 Ninth Cervi Affidavit at paras. 54, 58-59.

18. As is described below, the Applicants and the Monitor broadly canvassed the market following the SISP Approval Order to find parties interested in GreenSeal's business and property.[22] The SISP yielded a Qualified Bid for the AgMedica Purchased Entities,[23] which formed the basis for the AgMedica Transaction approved by the Court on October 4, 2024.[24]

B. The GreenSeal Transaction

19. Generating a value-maximizing sale of GreenSeal proved challenging. While the Stratford Facility was appraised in 2023, the purchase price was paid with common shares of Atlas, not cash.[25] Since then, the market has been flooded with similar sale opportunities: there have been at least eight CCAA proceedings for cannabis companies since Atlas' acquisition of GreenSeal.[26] Stoke has cited similar industry-wide issues as well as concerns as to GreenSeal's "low value."[27]

20. GreenSeal's management, in consultation with the Monitor, worked tirelessly during the Applicants' "one shot" to find a purchaser. Three bidders submitted multiple non-binding LOIs for GreenSeal by September 6, 2024, but the Monitor received **no** Qualified Bids for GreenSeal by the binding bid deadline on September 19, 2024.[28] The GreenSeal directors and officers made substantial efforts to encourage two bidders to rejoin the process. On September 20, 2024, offers were received from those two parties and shared with YNCU and Stoke. There were many

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22 Twelfth Cervi Affidavit at para. 54.

23 Ninth Cervi Affidavit at paras. 68-73. Key terms of the Shalcor/AgriRoots Bid are summarized in the Ninth Cervi Affidavit at para. 71.

24 Twelfth Cervi Affidavit at para. 49.

25 Twelfth Cervi Affidavit at para. 8.

26 See, *e.g.*, *Chalice Brands Ltd. (Re)* (23 May 2023), Toronto CV-23-00699872-00CL (ONSC) (Initial Order); *Fire & Flower Holdings Corp. (Re)* (5 June 2023), Toronto CV-23-00700581-00CL (ONSC) (Initial Order); *Aleafia Health Inc. (Re)* (25 July 2023), Toronto CV-23-00703350-00CL (ONSC) (Initial Order); *Trees Corporation (Re)* (22 December 2023), Toronto CV-23-00711935-00CL (ONSC) (Initial Order); *9869247 Canada Limited (d.b.a. Safari Flower Company) (Re)* (12 January 2024), Toronto CV-24-00712687-00CL (ONSC) (Initial Order); *BZAM Ltd. (Re)* (28 February 2024), Toronto CV-24-00715773-00CL (ONSC) (Initial Order); *Indiva Limited (Re)* (13 June 2024), Toronto CV-24-00722044-00CL (ONSC) (Initial Order); *Heritage Cannabis Holdings Corp.* (Re) (2 April 2024), Toronto CV-24-00717664-00CL (ONSC) (Initial Order).

27 Affidavit of David Adam Goldstein sworn July 8, 2024 at para. 9.

28 Twelfth Cervi Affidavit at paras. 55-56.

discussions between the Applicants, the parties, YNCU, and Stoke, facilitated by the Monitor and eventually the CRO. [29]

21. The Applicants ultimately received the Binding LOI dated October 12, 2024 from the Purchaser. The Binding LOI contemplates that the Purchaser will acquire all of the shares of GreenSeal.[30] In exchange, the Purchaser will retain the YNCU Loan (on newly negotiated terms), and Stoke will receive $460,000 on closing and $300,000 payable in 12 equal monthly payments thereafter. The conditions precedent to closing include vacating the Excise Lien.[31]

C. The GreenSeal ARVO

22. The AgMedica ARVO and the GreenSeal ARVO are substantially similar, but differ in a few respects. The GreenSeal ARVO particularizes the payments to be made to Stoke, a secured creditor of GreenSeal (para 21). Both ARVOs contain releases in favour of directors and officers of the Applicants, although the GreenSeal ARVO also includes GreenSeal, reflecting the fact that this order concerns the GreenSeal Transaction (para 29). The right of set-off, which was requested by the CRA, is now limited to the CRA (para 39). Further, ResidualCo, which was added as an Applicant in these CCAA proceedings by the AgMedica ARVO, need not be added again. Lastly, the CRO is discharged as GreenSeal will no longer be an Applicant.[32]

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29 Twelfth Cervi Affidavit at para. 57; Fourth Report of the Monitor dated October 28, 2024 (the "**Fourth Report**") at para. 20.

30 Twelfth Cervi Affidavit at para. 58.

31 The GreenSeal excise tax liability as secured by the Excise Lien is also excluded under the terms of the Binding LOI: Twelfth Cervi Affidavit at para. 59.

32 See the Blackline of Approval and Reverse Vesting Order to the Approval and Reverse Vesting Order granted October 4, 2024 by the Honourable Justice Black (the "**ARVO Blackline**"), Tab 5 to the Motion Record of the Applicants (Approval and Reverse Vesting Order returnable October 29, 2024) dated October 24, 2024 (the "**GreenSeal ARVO MR**").

PART III - THE ISSUES

23. The issues to be considered on this motion are whether this Court should grant the GreenSeal ARVO and the Monitor's Enhanced Powers & CCAA Termination Order, including:

(a) approving the GreenSeal Transaction;

(b) granting the Releases;

(c) sealing the Fifth Confidential Cervi Affidavit;

(d) granting the Monitor enhanced powers;

(e) authorizing the mechanism for terminating these CCAA proceedings; and

(f) extending the stay period until the CCAA Termination Time.

PART IV - THE LAW

A. The Transactions Should be Approved

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

24. 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, GreenSeal 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.[33] The sale proceeds, if any, stand in place of the assets and are available to satisfy creditor claims per their pre-existing priority.

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[33] *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).

25. 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.[34] 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.[35]

26. In deciding whether to grant an RVO, courts have considered the factors in section 36 of the CCAA,[36] 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.

27. 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.[37] In approving traditional asset sales, courts have also indicated that they "will not lightly interfere with the exercise of the commercial and

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

35 *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.

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

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

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."[38]

28. 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 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. [39]

29. When asked to grant a vesting order that extinguishes a third-party interest, the Court considers: (a) the nature and strength of the interest that is proposed to be extinguished; (b) whether the interest holder has consented to the vesting out of their interest; and (c) if the first two steps prove to be ambiguous or inconclusive, a consideration of the equities to determine if a vesting order is appropriate in the circumstances.[40]

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

30. 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.

31. 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

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38 *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.

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

40 *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras. 103, 109-110 [*Third Eye*].

reasonable opportunity to investigate and consider a potential purchase.[41] 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).[42] The Monitor's involvement in the SISP was much more robust than usual given the absence of a sales advisor.[43] 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.[44]

32. After the Bid Deadline passed without a bid, only the significant efforts of the Applicants and the CRO, Monitor, and their respective counsel yielded the GreenSeal Transaction.[45]

(c) ***The RVO Structure is Appropriate***

33. 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.[46] RVOs have been granted frequently in CCAA proceedings

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41 Ninth Cervi Affidavit at paras. 54-55; Fourth Report at para. 30.
42 Ninth Cervi Affidavit at para. 55.
43 Ninth Cervi Affidavit at para. 57; Fourth Report at para. 30.
44 Ninth Cervi Affidavit at para. 64.
45 Fourth Report at para. 30.
46 *Just Energy* at para. 34. See, *e.g.*, *Just Energy* at paras. 36-45; *Harte Gold* at paras. 70-76; *Acerus* at para. 13.

involving cannabis companies to transfer critical Health Canada and CRA licences.[47] A key component of GreenSeal's value is the GreenSeal Cannabis Licence from Health Canada in respect of the Stratford Facility and the GreenSeal Excise Licence from the CRA, which would be time-consuming and costly, if not impossible, to transfer to a purchaser under a traditional asset sale.[48]

34. 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.[49] 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.[50] The RVO structure does not require such arrangements, thereby avoiding delay and complexity and preserving value.

35. 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.[51]

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

36. Based on the outcome of the SISP, the consideration to be received under the GreenSeal Transaction is reasonable and fair.

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47 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.

48 Twelfth Cervi Affidavit at paras. 67-70; Fourth Report at para. 36.

49 *Just Energy* at para. 34.

50 Twelfth Cervi Affidavit at para. 71.

51 Fourth Report at paras. 36-38.

37. The Monitor believes that the GreenSeal Transaction would be more beneficial for creditors than a sale or disposition under a bankruptcy. Stoke and YNCU—the only parties with an economic interest in GreenSeal—have reached agreement with the Purchaser on mutually acceptable terms.[52] The YNCU Loan will remain in place (albeit pursuant to new terms) and Stoke will receive aggregate payments of $760,000 from YNCU and GreenSeal.[53] Lower-ranking creditors would receive no dividend in a bankruptcy, whereas they would still have the benefit of continued revenue from GreenSeal should they continue to supply it. Further, the Monitor believes that the Transaction is the only viable option to keep GreenSeal as a going-concern, and as such, benefits many stakeholders including customers, employees, the CRA, and suppliers.[54]

38. Although the Stratford Facility was appraised at the time of Atlas' 2023 acquisition of GreenSeal with a value greater than that achieved through the SISP,[55] this appraisal bears no relationship to the reality of the present-day cannabis market, given the multiple insolvencies in the industry and as can be seen from the results of the extensive SISP process.

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

39. The Applicants acknowledge that the GreenSeal Transaction does not provide proceeds to satisfy the claims of the CRA against the GreenSeal Purchased Entities in relation to unpaid excise taxes. 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 debt being assumed. The CRA would consequently be no better off under a bankruptcy, and the GreenSeal Transaction (including the vacation of the Excise Lien) should be approved.

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52 Fourth Report at para. 31.
53 Twelfth Cervi Affidavit at para. 64.
54 Fourth Report at para. 31.
55 Fifth Confidential Affidavit at para. 12.

40. The Excise Lien was subordinate to the YNCU Charge upon registration. The Excise Lien was registered against the Stratford Facility under s. 288 of the *Excise Act, 2001*.[56] That provision provides that the CRA may create a lien on property by registering a memorial obtained from the Federal Court evidencing a certification of excise tax arrears payable by the debtor.[57] Once created, the lien "shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded."[58] The Excise Lien, which was registered on March 26, 2024, therefore ranks behind the YNCU Charge, which was registered on March 9, 2021 and amended on August 16, 2022.[59]

(i) *The CRA's Recovery in a Bankruptcy*

41. While the CRA would retain its status as a secured creditor in respect of the Excise Lien under a bankruptcy, its priority would remain unchanged. Section 288(11) of the *Excise Act, 2001* provides that, if such a lien is registered in accordance with s. 87(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**"),[60] it is exempt from the general rule that Crown claims rank as unsecured under s. 86 of the BIA, and instead ranks as a secured claim, subject to s. 87(2) of the BIA. Section 87(2) provides that a security registered in accordance with s. 87(1) "is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration," which would subordinate the Excise Lien to the YNCU Charge.

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56 Twelfth Cervi Affidavit at para. 46.
57 *Excise Act, 2001*, s. 288(1)-(4).
58 *Excise Act, 2001*, s. 288(5).
59 Twelfth Cervi Affidavit at paras. 16, 46.
60 Section 87(1) of the BIA provides that a security is valid in relation to a bankruptcy only if it is registered under a "prescribed system of registration" (as defined in the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, s. 111) before the date of the initial bankruptcy event.

42. Although a bankruptcy sale could preserve the Excise Lien, the CRA's position would not materially improve. Given the results of the SISP, it is unlikely that the GreenSeal property would fetch a price sufficient to discharge the lower-ranking Excise Lien, nor is it plausible that a potential purchaser would wish to buy GreenSeal with the Excise Lien in place. 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 sale transaction 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.

43. Here, the Monitor is satisfied that the vesting out of CRA's claim to ResidualCo and discharge of the Excise Lien does not represent a worse outcome for CRA than would be expected in a bankruptcy. Any tax refunds payable to GreenSeal in respect of the pre-filing period will also be vested out to ResidualCo so that the CRA will be able to consolidate and set off those pre-filing tax refunds against its pre-filing arrears.[61] In addition, the GreenSeal ARVO contains certain protections to ensure that 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 to complete the technical requirements that the CRA must meet to assert such claims.[62]

(ii) *Vacating the Excise Lien is Appropriate*

44. Vacating the Excise Lien is a condition precedent to closing the GreenSeal Transaction.[63] Extinguish the CRA's interest in the Stratford Facility is appropriate considering the factors identified in *Third Eye*, which are: (a) the nature and strength of the interest that is proposed to be

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61 Fourth Report at para. 33.
62 Draft Approval and Reverse Vesting Order at paras. 31-32, 37-38, Tab 3, GreenSeal ARVO MR.
63 Twelfth Cervi Affidavit at para. 59.

extinguished; (b) whether the interest holder has consented to the vesting out of their interest; and (c) if the first two steps prove to be ambiguous or inconclusive, a consideration of the equities to determine if a vesting order is appropriate in the circumstances.[64]

45. The first two factors of the *Third Eye* test are inconclusive. The Excise Lien is "more akin to a fixed monetary interest that is attached to real or personal property subject to the sale (such as a mortgage or a lien for municipal taxes)" than to a fee simple interest that attracts a reasonable expectation that it cannot be involuntarily extinguished by payment in the ordinary course.[65] Similarly, while the CRA did not explicitly agree to subordinate the Excise Lien to the YNCU mortgage, it had notice of the higher-ranking YNCU Charge when the Lien was registered.

46. The third factor requires examination of the equities, which may include considering whether there is any equity in the property based on evidence of value.[66] As discussed above, the extensive SISP shows that there is insufficient equity in the property to discharge both the YNCU Charge and the lower-ranking Excise Lien. In other words, the choice is between a going-concern sale in which the Excise Lien is not satisfied and a bankruptcy in which the Excise Lien is not satisfied. In those circumstances, the equities weigh in favour of a going concern outcome.

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

47. 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.

48. The GreenSeal Transaction would result in a going-concern outcome. The Binding LOI provides the potential for many of GreenSeal's approximately 57 employees to preserve their

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64 *Third Eye* at paras. 103, 109-110.
65 *Third Eye* at para. 105.
66 *Third Eye* at para. 110.

employment, depending on the Purchaser's wishes. A substantial number of GreenSeal's suppliers of goods and services would be able to maintain their business relationships with GreenSeal. The GreenSeal Transaction would also ensure continuity of supply in provinces where GreenSeal has distribution operations that play a critical part in the provincial supply chain.[67]

B. The Releases Under the Proposed RVO are Appropriate

49. 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."[68]

50. 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.[69] It is not necessary for each of these factors to apply in order for the proposed release to be granted.[70]

51. The GreenSeal ARVO provides for releases that are substantially similar to those granted in the AgMedica RVO.[71] One set of releases (the "**General Post-Filing Releases**") are effective

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67 Twelfth Cervi Affidavit at para. 66.
68 *Blackrock Metals* at para. 128.
69 *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).
70 *Re Green Relief Inc.*, 2020 ONSC 6837 at para. 28 [*Green Relief*]; *Harte Gold* at para. 80.
71 See the ARVO Blackline at paras. 29-32.

upon the filing of the Monitor's Closing Certificate and limited to matters involving these CCAA proceedings and the GreenSeal Transaction.[72] These release various parties, namely:

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

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

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

(d) Steinberg Advisory Corp. and its respective current directors, officers, partners, employees, consultants and advisors, including Howard Steinberg;

(e) YNCU, in its capacity as mortgagee; and

(f) the Purchaser.[73]

52. The GreenSeal ARVO also provides for releases, effective upon the filing of the Monitor's Closing Certificate, in favour of Corey Hamilton and the current directors and officers of GreenSeal (collectively, the "**Released D&Os**") from claims in respect of the Purchased Entities, including claims for unpaid excise taxes, relating to the pre-filing period.[74]

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72 Twelfth Cervi Affidavit at paras. 72, 74.
73 Twelfth Cervi Affidavit at paras. 73, 75.
74 Twelfth Cervi Affidavit at paras. 77.

53. 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.[75]

54. 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 GreenSeal Transaction closes.[76] The Monitor observed that each Released Party has meaningfully contributed to the GreenSeal Transaction and, more generally, to the Applicants' successful restructuring.[77] Stoke and YNCU have made necessary contributions to the Applicants' restructuring by funding GreenSeal's ongoing operations[78] and part of the GreenSeal Transaction, respectively, and have both reached agreement with the Purchaser on mutually acceptable terms.[79] Numerous RVO transactions have included releases 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.[80]

55. The Released D&Os are current and former directors of the GreenSeal who have made significant and material contributions to enable GreenSeal to emerge from these CCAA proceedings as a going concern. For instance, during the SISP, among other efforts, the directors engaged in phone calls and meetings almost daily to answer questions or engage in negotiations with Potential Bidders and conducted tours with five parties at the Chatham and Stratford facilities. In addition, the former director (Corey Hamilton) is an employee and contributed to these CCAA

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75 Twelfth Cervi Affidavit at para. 78.
76 Twelfth Cervi Affidavit at para. 79.
77 Fourth Report at para. 44.
78 Twelfth Cervi Affidavit at para. 35.
79 Fourth Report at para. 31.
80 *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.

proceedings in that capacity. [81] No one is receiving any benefit from the KERP.[82] The Released D&Os also risk personal liability for excise tax unpaid during their tenure;[83] however, they are required to grant a release to GreenSeal as part of the Transaction.[84]

56. 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 GreenSeal 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,[85] a mechanism that has been employed in other CCAA proceedings involving RVOs and AVOs.[86] Language in the GreenSeal ARVO will facilitate the CRA's access to any available insurance.

C. The Fifth Confidential Cervi Affidavit Should be Sealed

57. Pursuant to s. 137(2) of the *Courts of Justice Act*, the Applicants request that the Fifth 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:[87]

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81 Twelfth Cervi Affidavit at para. 80.
82 Twelfth Cervi Affidavit at para. 81.
83 This potential liability is set out at paras. 84-85 of the Twelfth Cervi Affidavit.
84 Subscription Agreement dated October 28, 2024 at para. 8.2(j), Exhibit "A" to the Affidavit of Jason Cervi affirmed October 28, 2024.
85 Twelfth Cervi Affidavit at para. 89. The directors and officers' two insurance policies are named at para. 88.
86 See, *e.g.*, *Re Aleafia Health Inc. et al* (1 March 2024), Toronto CV-23-00703350-00CL (ONSC) (CCAA Termination Order and Endorsement) [*Aleafia Termination Order*]; *Green Relief* at paras. 58-73, 76; *MPX International Corporation (Re)*, 2022 ONSC 7152 (approving a CCAA Termination Order) [*MPX International*]; *Nexii Building Solutions Inc. et al (Re)* (28 June 2024), Vancouver 5240195 (BCSC) (Ancillary Order) at para. 14.
87 *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.

(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.[88] The Fifth Confidential Cervi Affidavit contains commercially sensitive information that could taint the SISP if disclosed.[89]

(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 Fifth 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."[90] The proposed sealing order applies only to limited materials. The benefits of the proposed sealing order in protecting the SISP outweigh any negative effects.

D. The Monitor Should be Granted Enhanced Powers

58. Once the GreenSeal Transaction closes, it will be necessary to conduct an orderly wind-down of the Remaining Applicants. The Monitor is seeking enhanced powers, which include, among other things, the exercise of any powers of the board of directors of Atlas Global Brands Inc., 8050678 Canada Inc., Tavivat Naturals Inc., Wellworth Health Corp and 2650751 Alberta Ltd. (the "**Remaining Applicants**") and the ability to cause the Remaining Applicants to perform such functions as the Monitor considers necessary to their winding-down and liquidation.[91]

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88 *Just Energy* at para. 72.
89 Fourth Report at paras. 48-49.
90 *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753 at para. 63.
91 Twelfth Cervi Affidavit at para. 93.

59. The CCAA provides the Court with broad discretion in respect of the Monitor's functions. Section 23(1)(k) of the CCAA provides that the Monitor can "carry out any other functions in relation to the [debtor] company that the court may direct." In addition, s. 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances. Courts have expanded the monitor's powers where the debtor company has no remaining management,[92] or in order to conclude the CCAA proceedings by effecting an orderly wind-down of the debtor's remaining operations.[93] Both circumstances are present in this case.

60. The proposed Monitor's Enhanced Powers and CCAA Termination Order will grant the Monitor the requisite authority to deal with the winding-down of the Remaining Applicants in an orderly and efficient manner.[94] Accordingly, it is appropriate in the circumstances to grant the Expansion of Monitor's Powers Order.

E. Termination-Related Relief Should be Granted

61. Upon the closing of the GreenSeal Transaction, each of the other Remaining Applicants, including ResidualCo, will have no material assets and conduct no business activity. The only remaining matter in these CCAA proceedings will be to conduct the orderly and efficient wind-up of the Remaining Applicants' estates.[95]

62. The Applicants seek an order that, upon the filing of the Monitor's Termination Certificate, would terminate these CCAA proceedings, discharge EY as Monitor of the Remaining Applicants, discharge all Charges, and authorize the Monitor to file an assignment in bankruptcy in respect of

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92 See, *e.g.*, *DCL Corporation*, 2023 ONSC 4475 at para. 7.

93 See, *e.g.*, *Harte Gold* at paras. 91-93; *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, 2023 NLSC 88 at paras. 84-85; *Just Energy* at paras. 24, 69, approving *Just Energy Group Inc. (Re)* (3 November 2022), Toronto CV-21-00658423-00CL (Ont. S.C.) (Order (Monitor's Enhanced Powers & Other Relief)).

94 Fourth Report at para. 53.

95 Twelfth Cervi Affidavit at para. 95; Fourth Report at paras. 55, 59.

the Remaining Applicants and act as their trustee in bankruptcy. These provisions are intended to facilitate the orderly and efficient wind-up of the Remaining Applicants' estates.[96]

63. It is well established that this Court may grant an order terminating proceedings under the CCAA on terms similar to those sought in the Enhanced Monitor's Powers & CCAA Termination Order, including provisions explicitly:

(a) terminating the CCAA proceedings upon service of an executed certificate by the monitor certifying that, to the knowledge of the monitor, all matters to be attended to in connection with the CCAA proceeding have been completed;

(b) terminating, releasing, and discharging any charges connected to the CCAA proceeding upon delivery of the monitor's certificate;

(c) discharging the monitor from all duties, obligations, and responsibilities; and

(d) authorizing the monitor to file an assignment in bankruptcy act as the trustee in bankruptcy.[97]

64. To reduce the costs of the bankruptcy process and to facilitate the orderly administration of the bankruptcy estates, the proposed order also authorizes the Monitor to procedurally consolidate the bankruptcies (the "**Consolidated Proceedings**"). The Consolidated Proceedings will allow for, among other things, one notice, one mailing to all creditors of the Remaining Applicants, and one creditors' meeting. The Consolidated Proceedings will be more efficient and

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96 Twelfth Cervi Affidavit at paras. 95-96, 98.

97 See, *e.g.*, *Aleafia Termination Order* at paras. 7-12; *Re Forever XXI ULC* (28 September 2022), Toronto CV-19-00628233-00CL (ONSC) (CCAA Termination Order) at paras. 8-9, 11-14 [*Forever XXI Termination Order*]; *Re Harte Gold Corp. et al.* (15 February 2022), Toronto CV-21-00673304-00CL (ONSC) (CCAA Distribution and Termination Order) at paras. 12-16 [*Harte Gold Termination Order*]; *Re Ignite Holdings et al.*, (20 January 2024), Toronto CV-23-00708635-00CL (ONSC) (CCAA Termination and Distribution Order) at paras. 11-15, 17-19 [*Ignite Termination Order*].

reduce costs in the bankruptcy proceedings.[98] CCAA courts have previously permitted procedural consolidation of the bankruptcy estates of debtors exiting a CCAA proceeding.[99]

65. The proposed Enhanced Monitor's Powers & CCAA Termination Order is appropriate in the circumstances and provides for an effective and appropriate process whereby these CCAA proceedings may be terminated.

F. The Stay of Proceedings Should be Extended

66. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. Courts have granted termination orders extending the stay period until the time of termination of the CCAA proceedings.[100]

67. The stay period currently expires on October 31, 2024. The Applicants ask that the Stay Period be extended to the CCAA Termination Time to permit the Monitor and the Applicants to properly and diligently work to close the Transactions and attend to administrative matters including the winding-up and/or dissolution of the Applicants, including ResidualCo.[101]

68. The Applicants have acted in good faith and with due diligence to communicate with all stakeholders. The extension of the Stay Period 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

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98 Twelfth Cervi Affidavit at para. 97; Fourth Report at para. 61.

99 See, *e.g.*, *Ignite Termination Order* at paras. 21-23; *Re King Street Company et al*., (29 March 2021), Toronto CV-20-00650945-00CL (ONSC) (Termination Order) at para. 17.

100 See, *e.g.*, *Aleafia Termination Order* at para. 25; *Harte Gold Termination Order* at para. 18.

101 Twelfth Cervi Affidavit at para. 92.

GreenSeal Transaction.[102] The Monitor anticipates that GreenSeal will have sufficient liquidity to close the GreenSeal Transaction.[103] Further, no creditor will suffer material prejudice as a result of the extension of the stay of proceedings.[104]

PART V - RELIEF REQUESTED

69. The Applicants respectfully request that this Court grant the GreenSeal ARVO, the Monitor's Enhanced Powers & CCAA Termination Order, and the related requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of October, 2024.

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per Mary Paterson
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Lawyers for the Applicant

[102] Twelfth Cervi Affidavit at para. 91.
[103] Fourth Report at para. 71.
[104] Twelfth Cervi Affidavit at para. 94.

SCHEDULE "A"

LIST OF AUTHORITIES	
Cases	
1.	*9869247 Canada Limited (d.b.a. Safari Flower Company) (Re)* (12 January 2024), Toronto CV-24-00712687-00CL (ONSC) (Initial Order)
2.	*Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
3.	*Aleafia Health Inc. (Re)* (25 July 2023), Toronto CV-23-00703350-00CL (ONSC) (Initial Order)
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.	*Arrangement relatif à FormerXBC Inc. (Xebex Adsorption Inc.)*, 2023 QCCS 1818
6.	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, leave to appeal ref'd 2008 CanLII 46997 (SCC)
7.	*BZAM Ltd. (Re)* (28 February 2024), Toronto CV-24-00715773-00CL (ONSC) (Initial Order)
8.	*Chalice Brands Ltd. (Re)* (23 May 2023), Toronto CV-23-00699872-00CL (ONSC) (Initial Order)
9.	*DCL Corporation*, 2023 ONSC 4475
10.	*Fire & Flower Holdings Corp. (Re)* (5 June 2023), Toronto CV-23-00700581-00CL (ONSC) (Initial Order)
11.	*Harte Gold Corp (Re)*, 2022 ONSC 653
12.	*Heritage Cannabis Holdings Corp.* (Re) (2 April 2024), Toronto CV-24-00717664-00CL (ONSC) (Initial Order)
13.	*Indiva Limited (Re)* (13 June 2024), Toronto CV-24-00722044-00CL (ONSC) (Initial Order)
14.	*Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
15.	*Just Energy Group Inc. (Re)* (3 November 2022), Toronto CV-21-00658423-00CL (Ont. S.C.) (Order (Monitor's Enhanced Powers & Other Relief))
16.	*Lydian International Limited (Re)*, 2020 ONSC 4006
17.	*MJardin Group, Inc., Re* (3 April 2023), Toronto CV-22-00682101-00CL (ONSC) (Endorsement)

LIST OF AUTHORITIES	
18.	*MPX International Corporation (Re)*, 2022 ONSC 7152 (approving a CCAA Termination Order)
19.	*Nexii Building Solutions Inc. et al (Re)* (28 June 2024), Vancouver 5240195 (BCSC) (Ancillary Order)
20.	*Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753
21.	*Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934
22.	*PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, 2023 NLSC 88
23.	*Quest University Canada (Re)*, 2020 BCSC 1883, leave to appeal ref'd 2020 BCCA 364
24.	*Re Aleafia Health Inc. et al* (27 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Endorsement)
25.	*Re Aleafia Health Inc. et al* (30 October 2023), Toronto CV-23-00703350-00CL (ONSC) (Approval and Reverse Vesting Order and Supplementary Endorsement)
26.	*Re Aleafia Health Inc. et al* (1 March 2024), Toronto CV-23-00703350-00CL (ONSC) (CCAA Termination Order and Endorsement)
27.	*Re Forever XXI ULC* (28 September 2022), Toronto CV-19-00628233-00CL (ONSC) (CCAA Termination Order)
28.	*Re Green Relief Inc.*, 2020 ONSC 6837
29.	*Re Harte Gold Corp. et al.* (15 February 2022), Toronto CV-21-00673304-00CL (ONSC) (CCAA Distribution and Termination Order)
30.	*Re Ignite Holdings et al.*, (20 January 2024), Toronto CV-23-00708635-00CL (ONSC) (CCAA Termination and Distribution Order)
31.	*Re King Street Company et al.*, (29 March 2021), Toronto CV-20-00650945-00CL (ONSC) (Termination Order)
32.	*Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (CA)
33.	*Sanjel Corporation (Re)*, 2016 ABQB 257
34.	*Sherman Estate v. Donovan*, 2021 SCC 25
35.	*Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
36.	*Trees Corporation (Re)* (22 December 2023), Toronto CV-23-00711935-00CL (ONSC) (Initial Order)

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

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3**

Crown Interests

Status of Crown claims

86 (1) In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in section 87 called a "workers' compensation body", rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

(a) to claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body

i. pursuant to any law, or

ii. pursuant to provisions of federal or provincial legislation, where those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or of a workers' compensation body; and

(b) to the extent provided in subsection 87(2), to claims that are secured by a security referred to in subsection 87(1), if the security is registered in accordance with that subsection.

Exceptions

(3) Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) 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 similar purpose 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, where 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,

and for the purpose of paragraph (c), the provision of provincial legislation 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 subsection 224(1.2) of the Income Tax Act in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the Canada Pension Plan in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

Statutory Crown securities

87 (1) A security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or of a province or of a workers' compensation body is valid in relation to a bankruptcy or proposal only if the security is registered under a prescribed system of registration before the date of the initial bankruptcy event.

Idem

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection

(a) is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration; and

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

***Bankruptcy and Insolvency General Rules*, C.R.C, c. 368**

Crown's Security

111 For the purposes of subsection 87(1) of the Act, a prescribed system of registration referred to in that subsection is a system of registration of securities that is available to Her Majesty in right of Canada or a province and to any other creditor holding a security, and is open to the public for inspection or for the making of searches.

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

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

(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.

[…]

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. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(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.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Monitors

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

i. publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

ii. within five days after the day on which the order is made,

A. make the order publicly available in the prescribed manner,

B. send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than $1,000 advising them that the order is publicly available, and

C. prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

i. without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

ii. not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

iii. at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(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.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

***Excise Act, 2001*, S.C. 2002, c. 22**

Certificates

288 (1) Any duty, interest or other amount payable by a person (in this section referred to as the "debtor") under this Act, or any part of the duty, interest or amount, that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

Registration in court

(2) On production to the Federal Court, a certificate in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

Costs

(3) All reasonable costs and charges incurred or paid for the registration in the Court of a certificate or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

Charge on property

(4) A document issued by the Federal Court evidencing a registered certificate in respect of a debtor, a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor, in the same manner as a document evidencing

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Creation of charge

(5) If a memorial has been filed, registered or otherwise recorded under subsection (4),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

Proceedings in respect of memorial

(6) If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

i. the filing, registration or other recording of the memorial, and

ii. proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

Presentation of documents

(7) If

(a) a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official of a property registry system of a province, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document shall be accepted for filing, registration or other recording or the access shall be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law

of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Sale, etc.

(8) Despite any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Completion of notices, etc.

(9) If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Application for an order

(10) A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Deemed security

(11) If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

Details in certificates and memorials

(12) Despite any law of Canada or of the legislature of a province, in any certificate in respect of a debtor, any memorial evidencing a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total;

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the prescribed rate under this Act applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period; and

(c) to refer to the penalty calculated under section 251.1 to be charged on the separate amounts making up the amount payable in general terms as a penalty under that section on amounts payable to the Receiver General.

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)

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