



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-730634-00CL DATE: JANUARY 13, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: INNOVERE MEDICAL INC. v. BDC CAPITAL INC. et al

BEFORE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE W.D. BLACK:

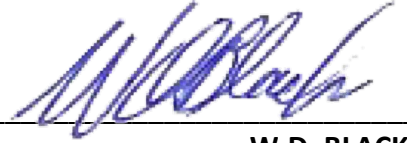
- [1] The applicant Innovere Medical Inc. (the “Applicant”) is a startup company that manufactures a medical device (“Innovision”) designed to reduce the anxiety and discomfort that patients experience while undergoing MRI scans. Innovision provides an immersive, anti-claustrophobic screen display and a U-shaped foam pillow with bone conduction speakers so that patients can watch and listen to entertainment before and during an MRI.
- [2] I granted an initial order under the CCAA in this matter on November 5, 2024, among other things providing the Applicant with a stay of proceedings until a comeback hearing on November 15, 2025, and authorizing the Applicant to make an initial draw under a debtor in possession term sheet dated November 4, 2024 (the “DIP Term Sheet”) with Hawk Capital (Canada) Inc. (“Hawk” and in such capacity the “DIP Lender”).
- [3] On November 15, 2025, I granted an amended and restated initial order (the “ARIO”) that, among other things, extended the stay period up to and including January 31, 2025, and authorized the Applicant to borrow up to the maximum principal amount under the DIP Term Sheet. That same day, I also granted in order (the “SISP Order”) that, again among other things, approved a sale and investment process the “SISP”) in respect of the Applicant and/or its assets.
- [4] The Applicant’s stated objective for the SISP was to find a going-concern solution for its business that would allow it to continue manufacturing its Innovision technology for the benefit of stakeholders and end-users.
- [5] On this motion, the Applicant seeks the court’s approval and assistance to implement the outcome of its SISP: a Subscription Agreement with the Applicant’s DIP Lender Hawk.
- [6] The Subscription Agreement provides a credit bid and other consideration in exchange for the acquisition of the Applicant’s shares through a reverse vesting structure. In connection with this proposed transaction the Applicant seeks
- (a) An Approval and Reverse Vesting Order to approve and implement the Subscription Agreement through a reverse vesting structure; and,
 - (b) A Stay Extension and Termination Order, which provides for a means of winding down this CCAA proceeding after the transaction closes.
- [7] The Applicant describes itself, relative to the proposed Approval and Reverse Vesting Order (“ARVO”), as “a quintessential candidate for an RVO”.
- [8] This is because, the Applicant asserts, the Applicant holds licenses and regulatory permissions to sell the Innovision device in over 20 jurisdictions, and relies on its portfolio of intellectual property to operate. The Applicant also has expected tax attributes arising from over \$14 million of estimated non-capital losses. It says, and I accept, that these various critical items would be prohibitively expensive, time-consuming, and perhaps impossible to transfer to a different entity under an asset purchase structure.

- [9] The Monitor notes that it extensively canvassed the market during the SISP, including by directly contacting approximately 59 potential strategic purchasers, and that the Subscription Agreement was the only bid submitted.
- [10] It says that, in any event, counterparties to the Excluded Contracts (as defined in the materials) will have a forum – ResidualCo’s bankruptcy proceedings – within which to advance their claims and interests, including in respect of intellectual property issues. It asserts, and I accept, subject to the discussion below concerning Siemens, that no creditor would be worse off under the proposed RVO structure than under any viable alternative transaction.
- [11] The proposed path to the termination of this CCAA proceeding following closing of the Subscription Agreement is set out and facilitated in large part by the proposed Stay Extension and Termination Order.
- [12] That is, once the transaction is closed, in keeping with other RVO structures that this court has approved in other proceedings, the Applicant will be removed as an applicant from this proceeding and ResidualCo will be added as an applicant. It is anticipated that ResidualCo, which will have no material assets, will make an assignment in bankruptcy, at which point, subject to completion of final administrative matters, there will be no ongoing need for this CCAA proceeding.
- [13] In order to ensure sufficient flexibility to complete post-closing items, the Applicant seeks an extension of the stay of proceedings from January 31 to February 28, 2025.
- [14] Apart from the position taken by Siemens, discussed below, the Applicant is not aware of any opposition to the two orders it seeks, and there was no sign of any such opposition during the hearing before me.
- [15] The Applicant, supported by the Monitor, argues that the Subscription Agreement and the proposed transaction satisfy the Soundair test, and that the reverse vesting structure is appropriate here under the analysis required under Harte Gold.
- [16] That is, the Subscription Agreement is the product of robust, transparent and extensive marketing efforts both before and during the SISP, and represents the only viable going-concern option for the Applicant’s business. In supporting the proposed transaction, the Monitor points out that a liquidating bankruptcy – the only realistic alternative – would likely result in a worse outcome for all stakeholders.
- [17] While the court should be cautious about granting an RVO, which is an exceptional creature of the court, I am satisfied that in this case the transaction meets the various factors set out in section 36(3) of the CCAA and confirmed in Soundair.
- [18] The process leading to the proposed transaction was reasonable and extensive, as set out above.
- [19] The Monitor supports the transaction and the RVO structure, and opines that the only viable alternative, a liquidation of the Applicant’s assets, would yield a worse result or no more favourable result for the Applicant’s stakeholders.
- [20] The Applicant’s principal secured senior creditors, the DIP Lender and BDC, were kept apprised of the SISP and related market outreach efforts.

- [21] As noted above, and relative to considerations under Harte Gold, the Applicant operates in a highly-regulated environment in which existing licenses and similar rights are difficult or impossible to assign to a purchaser.
- [22] The business largely consists of “soft” assets, including intellectual property, which again would be time-consuming and difficult to transfer.
- [23] Maintaining the existing legal entity here will preserve certain tax attributes that would be lost under an asset purchase structure.
- [24] Ultimately, and having regard to the Harte Gold factors, I accept that the RVO structure is necessary in this case to give effect to the only going-concern restructuring of the Applicant’s business.
- [25] The only opposition to the proposed transaction comes from Siemens Healthineers GmbH (“Siemens”). Siemens, which appeared before me at this hearing, does not definitively say that the transaction should not close; rather, it says that any order approving the transaction must not extinguish the rights that Siemens asserts under a Term Sheet between Siemens and the Applicant dated November 21, 2022 (the “Term Sheet”).
- [26] Specifically, Siemens position is that it has the right under that Term Sheet to use the Applicant’s intellectual property, so long as Siemens continues to fulfil its obligations under the Term Sheet.
- [27] The Applicant submits that these concerns are not an issue that must be decided on this motion, in that the ARVO does not restrict Siemens rights, to the extent those rights are confirmed, to use the Applicant’s intellectual property. The ARVO would only transfer Siemens’ agreements to ResidualCo and associated claims as Excluded Contracts and Excluded Liabilities, respectively; it would not impair any rights to used intellectual property including those rights that may be subject to section 36(8) of the CCAA.
- [28] In keeping with this proposition, the parties have exchanged proposed language, since January 9, 2025, when Applicant’s counsel, in consultation with the purchaser’s and the Monitor’s counsel, proposed certain language to Siemens’ counsel to confirm that the proposed ARVO does not affect any right of Siemens to use the Applicant’s intellectual property that would otherwise have been preserved by section 36(8) of the CCAA if the contemplated transaction was completed as an asset sale, and to the extent that Siemens’ asserted rights exist.
- [29] The dispute among the parties in fact boils down to a concern on each side that the other side is seeking, through the language of the proposed order, to “steal a march”. That is, Siemens, for its part, is worried that including words like “if any” (which appeared in the initial language proposed by the Applicant and Hawk) relative to its rights under the Term Sheet will suggest that there is any doubt about those rights when, it asserts, no such doubt is warranted.
- [30] On the other hand, the Applicant and Hawk, who are aligned as to the content of the order, are concerned that leaving out such language, and leaving the description of Siemens rights under the Term Sheet unqualified, will lead a future court to conclude that the rights are unassailable, whereas the Applicant and Hawk take issue with Siemens’ rights under the Term Sheet, and the Applicant has in fact been in brewing dispute with Siemens in that regard for some time.

- [31] With a view to solving the roadblock over the words of the order, the parties were discussing the language, and exchanging draft versions of the relevant language, prior to the motion. Inasmuch as they had not come to a mutually acceptable landing, they suggested, and I agreed, that they could take the afternoon (the motion was heard from 12:00 p.m. to 1:00 p.m.) to continue the attempt to iron out an acceptable version.
- [32] Unfortunately, the parties, having done so, did not succeed in reaching an agreement, and accordingly submitted to me updated versions of their respective proposed versions of the necessary language, accompanied by brief (three paragraphs long) further submissions to persuade the court as to the preferability of the version they were touting.
- [33] More specifically, the Applicant and Hawk proposed one version, Siemens proposed another, and the Monitor, which had earlier attempted to provide a version that would be acceptable to all concerned and would allow the transaction to close, weighed in with its views.
- [34] Overall, with no disrespect to counsel, I find that this issue is something of a tempest in a teapot. I do not believe that the presence or absence of particular modifying words in the RVO order will foreclose any party from asserting a position, down the road, regarding their interpretation of the Term Sheet.
- [35] Indeed, the parties agree with one another that no such foreclosure should ensue; they all agree that the RVO order should and does leave it open to any party to advance a claim, in some forum in future, concerning their respective rights thereunder.
- [36] I confirm that the intent of the order is not to foreclose any such claims.
- [37] Rather, the intent of the RVO is to allow a transaction to close that will preserve, to the greatest extent possible, the prospect of stakeholders in Innovision realizing its value (as a going-concern).
- [38] I find that the language proposed by the Monitor, in its original suggestion, but removing the words “if any” where those words first appear, represents the best compromise and way forward here.
- [39] In confirming that language, I wish to be clear that I am not making nor implying any disposition of the asserted positions (on either side). The extent of the rights at issue remains to be determined in a court of competent jurisdiction in future.
- [40] I direct the Applicant to prepare a final version of the ARVO to include that language, which I will then confirm and sign.
- [41] I also confirm that the proposed releases included in the ARVO are reasonable and appropriate, and are limited appropriately to releases rationally connected to the purpose of the plan. I find that the proposed releases in fact meet the non-exhaustive list of factors established by Morawetz CJ in *Lydian*.

[42] In all of the circumstances, I am granting the two orders sought by the Applicant (again with the proviso that the Applicant is to provide an order, for my approval, incorporating the language discussed above with respect to the issue raised by Siemens).

A handwritten signature in blue ink, appearing to read "W.D. Black J.", is positioned above a horizontal line.

W.D. BLACK J.

DATE: JANUARY 13, 2025