



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00706033-00CL DATE: 31 July 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BIOSTEEL SPORTS NUTRITION INC. et al**
BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

1. The entire Canadian and US service lists were served with this motion by the Monitor for the following orders: terminating these proceedings under the CCAA upon the Monitor's service of the Monitor's Termination Certificate (which will establish the CCAA Termination Time), discharging the Monitor,

terminating, releasing and discharging the Administration Charge and Directors' Charge, approving certain third party releases, extending the Stay of Proceedings from July 31, 2024 to the CCAA Termination Time and authorizing the assignment into bankruptcy of the Applicants after the CCAA Termination Time. The Monitor also seeks approval of its activities as described in its Sixth Report dated July 24, 2024 and its fees and the fees of its counsel from March 1, 2024 to date and approval of a fee reserve to cover any work it undertakes between now and the CCAA Termination Time.

2. No one opposes the relief sought, which is supported by the Applicants and their senior secured lender and ultimate parent company, Canopy Growth Corporation ("Canopy Growth"). Canopy Growth's debt remains impaired.
3. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sixth Report.
4. These CCAA proceedings began with an initial order made on September 14, 2023, followed by a petition under Chapter 15 of Title 11 of the *United States Code*, 11 U.S.C. §§101-1532 Division (the "Bankruptcy Code") for an order recognizing these CCAA proceedings as a foreign main proceeding by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "US Bankruptcy Court"), which was granted on October 11, 2023.
5. A court approved SISP was carried out, resulting in two transactions that were approved by this court (and recognized by the US Bankruptcy Court). Those transactions closed on November 30, 2023. Thereafter, the court issued further orders, including to authorize certain distributions and to enhance the Monitor's powers, eventually resulting in the sale of the remaining inventory that closed on March 1, 2024. All that remains to be done now is to distribute the remaining cash to the Applicants' senior ranking secured creditor (subject to a reasonable reserve for amounts subject to the Administration Charge to be incurred up to the CCAA Termination Time) and wind-down the Applicants' business.
6. These CCAA proceedings have served their purpose. The business, operations and monetizable assets of the Applicants have been sold, and the Applicants have no remaining material assets and conduct no business activities.
7. In these circumstances, and for the more detailed reasons set forth in the factum filed on behalf of the Monitor on this motion, I am satisfied that the proposed CCAA Termination Order should be granted so these CCAA Proceedings can be brought to an orderly close to provide certainty and finality for all parties.
8. It is well established that the Court may grant an order terminating proceedings under the CCAA and discharging the Monitor appointed in the proceedings even where there is no plan of arrangement, compromise of claims or restructuring. See *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 14; and *Re JTI-Macdonald Corp.*, 2010 ONSC 4212 at paras 14, 18-19. Many specific examples of such orders similar to the one sought today have been provided in the Monitor's factum.
9. The requested authorizations to make an assignment in bankruptcy and to administer the bankruptcy estates as if such estates were in respect of a single bankrupt are intended to facilitate the orderly and efficient wind-up of the Applicants' estates. Similar provisions have been included in the examples of CCAA termination orders referenced in the factum filed in support of this motion. This will enhance the expedience and efficiency and orderly administration of any further proceedings for the benefit of all stakeholders without any apparent prejudice to any particular stakeholder.
10. The test for granting third party releases was established in *Re Lydian International Limited*, 2020 ONSC 4006 at para 54. These releases can and have been granted outside of a plan of arrangements. See for example, *Re ENTREC Corporation*, 2020 ABQB 751 at paras 5-9 and *In the Matter of a Plan of Arrangement of UrtheCast Corp.*, 2021 BCSC 1819 at paras 91-95.
11. The proposed Releases satisfy this test. The record on this motion establishes that the Released Parties and the Released D&Os have, as the case may be:
 - a. facilitated and significantly contributed to these CCAA proceedings, including the Transactions, in a manner which allowed BioSteel's business to continue until such time as it could be sold for the benefit of a variety of stakeholders (for example in the case of the D &O's); and

- b. made significant contributions to these CCAA proceedings by, among other things, employing individuals both at the BioSteel facility in Verona, Virginia and more broadly to support BioSteel's Canadian business operations which in turn allowed for continued product sales, support during the SISP and CCAA process generally (for example, in the case of Canopy Growth and other Released Parties).
12. Further, the proposed releases are appropriately limited in scope and are referable to matters arising in connection with these proceedings. The Monitor and the sole creditor with an economic interest in the Applicants support granting the proposed Releases.
13. The current Stay expires today. It is just and appropriate for it to be extended until the CCAA Termination Time. The Applicants have been acting in good faith and there is projected to be sufficient liquidity to fund the expenses in these CCAA proceedings to and including the CCAA Termination Time. There is no opposition to the requested extension of the Stay, nor any apparent prejudice. The Stay is extended pursuant to s. 11.02 of the CCAA.
14. The Monitor is in control of when the CCAA Termination Time will be triggered, by the filing of the Monitor's Certificate, which can only take place after steps are taken for the recognition and enforcement of today's order of this court by the US Bankruptcy Court (which requires a 21 day notice period after filing) and after certain final distributions contemplated by this order. The Monitor anticipates filing its certificate in August 2024, but if it has not done so by then, it shall arrange a case conference to report to this court in September, 2024.
15. The fees for which approval is sought (from and after March 1, 2024 and the limited reserve for remaining fees until the Monitor's discharge) are supported by fee affidavits. The ARIO contemplated that the Monitor would seek the court's approval of the fees and disbursements of itself and its counsel from time to time, as has been done in this case. The rates have been the subject of prior approval orders in these proceedings. The amount of the fees appear to be reasonable having regard to the work done, or expected to be done, in the relevant periods
16. The actions, conduct and activities of the Monitor described in the Sixth Report are approved. The record demonstrates that Monitor has acted reasonably, with due diligence, and in good faith throughout these CCAA proceedings. Approval of the activities of the Monitor, with the appropriate limitations that have been included in this case, has become common practice for policy reasons articulated in *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23. This is particularly appropriate when CCAA proceedings are terminating and the Monitor is being discharged.
17. For all of the foregoing reasons and the further reasons set forth in the Monitor's factum filed in support of this motion, I have signed the requested CCAA Termination Order today, which shall have immediate effect.



KIMMEL J.