

**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 BIOSTEEL SPORTS NUTRITION INC.,
BIOSTEEL MANUFACTURING LLC, AND BIOSTEEL
SPORTS NUTRITION USA LLC

(the “Applicants”)

**REPLY MOTION RECORD OF THE MONITOR/MOVING PARTY
(Coldhaus Motion, Returnable April 8, 2024)**

March 20, 2024

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TO: THE SERVICE LIST

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Tab 1



**Supplement to the Fifth Report of
KSV Restructuring Inc.
as CCAA Monitor of
BioSteel Sports Nutrition Inc.,
BioSteel Manufacturing LLC, and
BioSteel Sports Nutrition USA LLC**

March 20, 2024



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 Assessment of Pre-filing BillbacksA

Court File No.: CV-23-00706033-00CL

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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 BIOSTEEL SPORTS NUTRITION INC., BIOSTEEL MANUFACTURING
LLC, AND BIOSTEEL SPORTS NUTRITION USA LLC

SUPPLEMENT TO THE FIFTH REPORT OF KSV
RESTRUCTURING INC.

March 20, 2024

1.0 Introduction

1. This report (the "Supplemental Report") supplements the Monitor's fifth report to the Court dated March 11, 2024 (the "Fifth Report").
2. The procedural background and Court Orders are laid out in detail in the Fifth Report and are accordingly not repeated herein.
3. Unless otherwise stated, capitalized terms used in this Supplemental Report have meanings provided to them in the Fifth Report and in the Motion Record by Coldhaus dated March 15, 2024 (the "Coldhaus Motion Record"). This Supplemental Report is subject to the scope and terms of reference in the Fifth Report.

1.1 Purposes of this Report

1. The purpose of this Supplemental Report is to address and clarify certain matters raised in the Coldhaus Motion Record.

2.0 Monitor's Response

2.1 Responses to Certain Contentions in Coldhaus' Evidence

1. On March 15, 2024, the Monitor received a copy of the Coldhaus Motion Record delivered in connection with the Monitor's efforts to collect the Uncollected Amounts.
2. The Coldhaus Motion Record includes the affidavit of Edwina Fung affirmed March 15, 2024 (the "Fung Affidavit"). Certain contentions in the Fung Affidavit are addressed below:

- i. the Fung Affidavit defines certain rebates to be provided by BioSteel Canada to Coldhaus under the Distribution Agreement as “Billbacks”. The Fung Affidavit claims that Coldhaus’ failure to settle the pre-filing Uncollected Amounts, including some overdue since March 7, 2023, is due to BioSteel Canada’s failure to issue credit memos for Billbacks and pay for warehouse services. However, nothing in the Distribution Agreement provides a unilateral right to Coldhaus to withhold payment to BioSteel Canada pending the issuance of credit memos by BioSteel Canada or the resolution of disputed invoices. To the contrary, section 4.5 of the Distribution Agreement requires Coldhaus to continue performing its obligations pending any invoice dispute.
- ii. the Fung Affidavit acknowledges that Coldhaus’ liability to BioSteel Canada is at least approximately \$2.6 million, which has been due and owing pursuant to pre-filing invoices issued to Coldhaus. Notwithstanding Coldhaus’ acknowledgment of this minimum liability, Coldhaus has made no efforts to pay this amount, or any portion of it, in essence leveraging the CCAA proceedings to delay making payment towards amounts that it acknowledges it owes;
- iii. the Fung Affidavit alleges that on December 5, 2023, Coldhaus exercised its “Distribution Agreement termination sell-back option.” However, neither BioSteel Canada nor Coldhaus delivered a written notice of termination when Coldhaus unilaterally delivered an invoice for its sell-back option. Accordingly, the Distribution Agreement had not been terminated on December 5, 2023. In any event, notwithstanding that neither party has terminated the Distribution Agreement, the stay provisions of the ARIO preclude Coldhaus from terminating the Distribution Agreement;
- iv. the Fung Affidavit attempts to justify Coldhaus’ failure to sell the BioSteel Canada inventory because BioSteel Canada was not issuing credit memos after the Filing Date. However, as set out above, section 4.5 of the Distribution Agreement requires Coldhaus to continue performing its obligations – including its obligation pursuant to section 3.1 to exert its best efforts to supply and serve the inventory in the applicable territory – pending any invoice dispute. Accordingly, any alleged failure of BioSteel Canada to issue credit memos does not alleviate Coldhaus from its duty to make best efforts to sell the inventory, which it could have done in the normal course since the CCAA filing;
- v. in alleging that the Monitor “prematurely” sought litigation to resolve the Uncollected Amounts, the Fung Affidavit has mischaracterized the events preceding this motion. The Monitor first sought payment from Coldhaus on October 26, 2023, and engaged in good faith negotiations with Coldhaus through February 2024 in an effort to resolve the Uncollected Amounts and avoid litigation. During those discussions, on February 8, 2024, Coldhaus made a with prejudice offer (attached to the Fung Affidavit as Exhibit “H”) offering to resolve the dispute for a payment of \$500,000 upon settlement and the balance of \$2,052,828.64 on June 30, 2024 (these amounts being collectively defined as the “Undisputed Liability”). The timing and amounts offered by Coldhaus were unacceptable given the total amounts owing by Coldhaus and the lengthy period over which those amounts have been outstanding. Further, the proposed timing would have delayed the timely wind down of the Applicants; and

- vi. finally, as set out above and in the Fung Affidavit, the with prejudice amount offered by Coldhaus is the amount of Coldhaus' acknowledged Undisputed Liability. In light of Coldhaus' acknowledgment of the Undisputed Liability and the period for which it has been outstanding, there is no basis for Coldhaus to continue to withhold this payment. From the Monitor's perspective, the appropriate course of action would have been for Coldhaus to pay the Undisputed Liability, and for any further disputed amounts to be resolved either consensually or with the assistance of the Court. Coldhaus' continued refusal to pay the Undisputed Liability, coupled with the parties' disagreement over the remaining disputed amounts, necessitated this motion.

2.2 Summary of the Uncollected Amounts

1. The Monitor understands that, pursuant to the Distribution Agreement, the amount of the Billbacks could not be determined until Coldhaus sold the purchased inventory, as the amount of the Billbacks varied depending on the customer that purchased the inventory from Coldhaus.
2. The Monitor also understands that certain of the Billbacks were determined and invoiced during the pre-filing period. Those Billbacks are set out in the "Pre-Filing Billbacks conceded by the Monitor" row in the table below. After further review and consideration of the evidence, the Monitor does not dispute these Pre-Filing Billbacks.
3. It appears from the Monitor's review that certain of the Billbacks arose post-filing and were invoiced after the Filing Date. The Monitor is of the view these "Post-Filing Billbacks" should not be set off from the Uncollected Amounts, in accordance with paragraph 18 of the ARIO.
4. The Monitor's assessment of the Pre-Filing Billbacks is built onto Coldhaus' Billback Listing and is attached hereto as Appendix "A".
5. The table below sets out: (a) the net Uncollected Amounts sought by the Monitor after deducting the pre-filing Billbacks and the outstanding amount owing to Coldhaus pursuant to the Prepayment Agreement; and (b) the net liability after deducting the Post-filing Billbacks and post-termination buy-back rights that are not conceded by the Monitor:

	Balance Due
Total Uncollected Amounts owed by Coldhaus to BioSteel (including pre-judgment interest)	7,494,211.05
Less amounts conceded by the Monitor:	
Pre-filing Billbacks	(3,321,515.39)
The Outstanding Payment Amounts	(87,056.00)
Net Uncollected Amounts owed by Coldhaus Sought by the Monitor	4,085,639.66
Less amounts not conceded by the Monitor:	
Post-filing Billbacks	(275,917.45)
Post-termination buy-back	(1,053,437.40)
Net Uncollected Amounts After Deducting Disputed Amounts	2,756,284.81

3.0 Conclusion

1. As laid out above in this Supplemental Report, considering the evidence collected by the Monitor with respect to the Pre-Filing and Post-Filing Billbacks, the Monitor is seeking an order from this Court directing Coldhaus to pay the Uncollected Amounts (plus accrued interest), less the Pre-Filing Billbacks and Outstanding Payment Amounts, which totals \$4,085,639. The Monitor is also seeking its costs of the motion.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS MONITOR OF
BIOSTEEL SPORTS NUTRITION INC.,
BIOSTEEL MANUFACTURING LLC,
AND BIOSTEEL SPORTS NUTRITION USA LLC
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Date	Due Date	Load Sh#	Customer	Invoice N	Open Balance	Net Balance	Memo	Credit Memo	Pre-filing	Monitor's view on pre vs post filing
2023-08-16	2023-09-15	273658	BioSteel	1757402	\$31,753.90		Biosteel frontline pricing - CHDISTBIO705- August 07 to August 13	2002952980	31,753.90	Pre-filing
2023-08-16	2023-09-15	273658	BioSteel	1757416	\$21,711.76		Biosteel promo - CHDISTBIO706 - August 07 to August 13	2002952981	21,711.76	Pre-filing
2023-08-16	2023-09-15	273658	BioSteel	1757441	\$626.47		Biosteel free goods - CDL - CHDISTBIO707 - August 07 to August 13	2002952982	626.47	Pre-filing
2023-08-16	2023-09-15	273658	BioSteel	1757443	\$1,689.42		Frontline pricing CDL - CHDISTBIO708 - August 07 to August 13	2002952983	1,689.42	Pre-filing
2023-08-16	2023-09-15	273658	BioSteel	1757448	\$2,991.40		Sobeys Metro prog - CDL - CHDISTBIO709 - August 07 to August 13	2002952984	2,991.40	Pre-filing
2023-08-14	2023-09-13	273152	BioSteel	1752270	\$509,234.70		Biosteel Rebate and Management fee July 2023	2002953000	509,234.70	Pre-filing
2023-08-14	2023-09-13	273664	BioSteel	1762362	\$161,796.78		7th August - 13th August Freight		161,796.78	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747306	\$29,593.03		Biosteel promo - CHDISTBIO700 - July 31, 2023 to Aug 06, 2023	2002952942	29,593.03	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747321	\$40,748.09		Biosteel frontline pricing - CHDISTBIO699- July 31, 2023 to Aug 06, 2023	2002952941	40,748.09	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747339	\$3,221.62		Biosteel free goods - CHDISTBIO698 - July 31, 2023 to Aug 06, 2023	2002952940	3,221.62	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747344	\$4,064.55		Sobeys Metro prog - CDL - CHDISTBIO703 - July 31, 2023 to Aug 06, 2023	2002952945	4,064.55	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747360	\$2,218.53		Frontline pricing CDL - CHDISTBIO702 - July 31, 2023 to Aug 06, 2023	2002952944	2,218.53	Pre-filing
2023-08-10	2023-09-09	272592	BioSteel	1747366	\$1,610.93		Biosteel free goods - CDL - CHDISTBIO701 - July 31, 2023 to Aug 06, 2023	2002952943	1,610.93	Pre-filing
Total					\$3,597,432.84			Total Pre-Filing Billbacks determined by the Monitor	\$3,321,515.39	

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Proceedings commenced at Toronto

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