

**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
CONTRACT PHARMACEUTICALS LIMITED, GLASSHOUSE PHARMACEUTICALS
LLC AND 1000834899 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
Motion for CCAA Termination Order
(Returnable September 17, 2024)**

September 13, 2024

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto ON M5H 2S7

Christopher Armstrong (LSO# 55148B)
carmstrong@goodmans.ca

Erik Axell (LSO# 853450)
eaxell@goodmans.ca

Jennifer Linde (LSO# 86996A)
jlinde@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicants

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I. INTRODUCTION

1. On December 15, 2023 (the “**Filing Date**”), the Initial Applicants (as defined below) commenced these proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and obtained an Initial Order (as amended and restated pursuant an Order of the Court dated December 22, 2023, the “**ARIO**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The ARIO, among other things, appointed KSV Restructuring Inc. (“**KSV**”) as monitor of the Initial Applicants (in such capacity, the “**Monitor**”).¹

2. The principal purpose of these CCAA Proceedings had been to stabilize the CPL Business, obtain the additional liquidity required to operate the CPL Business, continue the implementation of the Initial Applicants’ operational restructuring efforts, and pursue a refinancing, sale, and investment solicitation process (“**SISP**”) with a view to identifying and completing the best transaction available to the Initial Applicants.

3. The SISP, approved by the Court on December 22, 2023, culminated in this Court’s approval of the Share Purchase Agreement dated as of March 30, 2024 (as amended, the “**Sale Agreement**”), between Contract Pharmaceuticals Limited (“**CPL**”), as seller (“**Seller**”), and AIP Elixir Buyer Inc., as buyer (“**Buyer**”), and the reverse vesting transaction contemplated therein (the “**Transaction**”), pursuant to the Approval and Reverse Vesting Order dated April 17, 2024 (the “**ARVO**”). The Transaction successfully closed on June 5, 2024.

¹ All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the ARIO, the Affidavit of Jan Sahai sworn December 14, 2023, or the Affidavit of Jan Sahai sworn April 3, 2024, filed in the within proceedings.

4. In the months that followed the closing of the Transaction, the Applicants, under the supervision and guidance of the Monitor, worked to complete various post-closing matters and advance the orderly wind-down of the Applicants' business and affairs. With this work now largely complete and the current stay period expiring on September 18, 2024 (the "**Stay Period**"), the Applicants seek approval of an order (the "**CCAA Termination Order**"), among other things:

- (a) terminating these CCAA Proceedings effective as at the CCAA Termination Time (as defined below);
- (b) releasing the Administration Charge and the Directors' Charge granted in these CCAA Proceedings effective as at the CCAA Termination Time;
- (c) providing for the discharge of KSV as the Monitor effective as at the CCAA Termination Time;
- (d) releasing and discharging the Monitor and its affiliates, officers, directors, employees, legal counsel and agents (collectively, the "**Released Parties**") from the Released Claims (as defined below), effective at the CCAA Termination Time;
- (e) approving the Fifth Report of the Monitor dated June 10, 2024 (the "**Fifth Report**"), and the Sixth Report of the Monitor dated September 11, 2024 (the "**Sixth Report**" and, together with the Fifth Report, the "**Monitor Reports**"), and the activities and conduct of the Monitor up to and including the date of the CCAA Termination Order in relation to the Applicants and these CCAA Proceedings (including as described in the Monitor Reports);

- (f) approving the fees and disbursements of the Monitor and its counsel for the periods identified in the Sixth Report, as well as the Fee Accrual (as defined and set out in the Sixth Report) for the Monitor and Cassels in connection with the completion of the Monitor's remaining duties in these CCAA Proceedings; and
- (g) extending the Stay Period to the earlier of (i) the CCAA Termination Time, and (ii) such other date as the Court may order.

5. The Applicants respectfully submit that granting the foregoing relief is appropriate in the circumstances to enable the Applicants and the Monitor to complete the remaining matters in these CCAA Proceedings in an efficient and cost-effective manner, and bring these CCAA Proceedings to an orderly conclusion.

II. FACTS

6. CPL, CPL Canada Holdco Limited ("**CPL Canada Holdco**"), Contract Pharmaceuticals Limited Canada ("**CPL Canada**"), Glasshouse Pharmaceuticals Limited Canada ("**Glasshouse Canada**") and Glasshouse Pharmaceuticals LLC ("**Glasshouse America**" and, together with CPL, CPL Canada Holdco, CPL Canada, and Glasshouse Canada, the "**Initial Applicants**") sought CCAA protection on the Filing Date pursuant to the Initial Order.²

7. Concurrently with the granting of the ARIO, this Court granted the SISP Approval Order which, among other things, approved the SISP to be undertaken by the Initial Applicants with the assistance of the Financial Advisor and under the oversight of the Monitor.³ The efforts undertaken

² Sixth Report at s 1, para 1 [\[E830:E3\]](#).

³ Sixth Report at s 1, para 4 [\[E831:E4\]](#).

in respect of the SISP culminated in the receipt of several submissions by the Qualified Bid Deadline, including a bid from Aterian (the “**Aterian Bid**”).⁴

8. On March 29, 2024, the Aterian Bid, as ultimately negotiated in the form of the Sale Agreement, was determined to be the Successful Bid pursuant to the terms of the SISP. Accordingly, the Sale Agreement was entered into by the Buyer and the Seller on March 30, 2024.⁵

9. On April 17, 2024, the Initial Applicants sought and obtained the ARVO, which, among other things: (a) approved the Sale Agreement and the Transaction; and (b) declared that upon closing of the Transaction, CPL Canada Holdco, CPL Canada and Glasshouse Canada shall cease to be Applicants in these CCAA Proceedings and 1000834899 Ontario Inc. (“**ResidualCo**”) shall be added as an Applicant to these CCAA Proceedings.⁶

10. Also on April 17, 2024, the Initial Applicants sought and obtained the following:

- (a) the Ancillary Relief Order, which, among other things: (i) extended the Stay Period to and including June 17, 2024; (ii) upon closing of the Transaction, authorized and empowered the Monitor to exercise any powers which may be exercised by the board of directors of each of CPL, Glasshouse America and ResidualCo; and (iii) authorized the Initial Applicants and the Monitor to make distributions from the net proceeds resulting from the Transaction to RBC, EDC and Deerfield; and
- (b) the Terminated Employee Fund Order, which, among other things, approved the Terminated Employee Fund Escrow Agreement ultimately entered into between the Buyer, as depositor, and the Monitor, as escrow agent, pursuant to which the

⁴ Sixth Report at s 1, para 5 [E832:E5].

⁵ Sixth Report at s 1, para 6 [E832:E5].

⁶ Sixth Report at s 1, para 6 [E832:E5].

Terminated Employee Fund was established in order to pay a Hardship Benefit to Terminated Employees (as defined in the Sale Agreement), subject to the terms of the Terminated Employee Fund Escrow Agreement.⁷

11. The obligation of the Buyer to consummate the Transaction was subject to, among other things, obtaining Chapter 15 Recognition in the United States. Pursuant to the ARIO, CPL was authorized to act as a foreign representative and to apply for foreign recognition of these CCAA Proceedings in any jurisdiction outside of Canada. Accordingly, the Initial Applicants filed voluntary petitions for recognition of these CCAA Proceedings and a motion seeking recognition of the ARVO with the U.S. Bankruptcy Court on April 30, 2024. Final recognition of the CCAA Proceedings and the ARVO was granted by the U.S. Bankruptcy Court on May 24, 2024.⁸

12. On June 5, 2024, the Transaction successfully closed. As part of the closing sequence contemplated under the Sale Agreement and as approved pursuant to the Ancillary Relief Order, the Monitor made certain distributions from the net proceeds of the Transaction to RBC, EDC and Deerfield in respect of the full amount of the obligations outstanding under their respective loan agreements (in the case of the Deerfield pre-filing facility, less an \$8 million deferred payment). Payments were also made by CPL Canada to satisfy the amounts secured by the KERP Charge and the Financial Advisor Charge.⁹

13. On June 13, 2024, the Applicants sought and obtained an order extending the Stay Period to September 18, 2024, to provide the Applicants and the Monitor with the time needed to work to

⁷ Sixth Report at s 1, para 6 [E832:E5–E833:E6].

⁸ Sixth Report at s 1, para 8 [E833:E6].

⁹ Sixth Report at s 1, para 9 [E833:E6].

address various post-closing and wind-down matters, including, among other things, the administration of the Terminated Employee Fund.¹⁰

14. Since the closing of the Transaction, the Applicants and the Monitor have completed various post-closing and wind-down matters, as further described in the Sixth Report. At this time, nearly all of the matters required to finalize these CCAA Proceedings have been completed, other than certain limited remaining activities described in the Sixth Report (the “**Remaining Activities**”), which include, among other things, attending to final matters with respect to the administration of the Terminated Employee Fund, attending to the wind-down of CPL and Glasshouse America, attending to the bankruptcy of ResidualCo, and distributing any remaining balance of the Administrative Expense Reserve upon termination of the CCAA Proceedings.¹¹

III. ISSUES AND THE LAW

15. The issues to be considered on this motion are whether the Court should:

- (a) authorize the termination of the CCAA Proceedings and the release of the Administration Charge and Directors’ Charge as at the CCAA Termination Time;
- (b) discharge KSV as Monitor as at the CCAA Termination Time;
- (c) release and discharge the Released Parties from the Released Claims;
- (d) approve the Monitor Reports and the fees and disbursements of the Monitor and its counsel, including amounts to be incurred through the completion of these CCAA Proceedings; and

¹⁰ Sixth Report at s 1, para 10 [E833;E6].

¹¹ Sixth Report at ss 2.1–2.3 [E834;E7–E835;E8].

- (e) extend the Stay Period.

16. The Applicants respectfully submit that the Court ought to grant the foregoing relief pursuant to the proposed CCAA Termination Order.

A. Termination of the CCAA Proceedings

- (i) *Termination of the CCAA Proceedings and Discharge of the Monitor is Appropriate*

17. On many occasions, this Court has granted an order terminating proceedings under the CCAA and discharging the Monitor appointed in those proceedings on terms similar to those sought in the proposed CCAA Termination Order.¹²

18. Pursuant to the proposed CCAA Termination Order, upon service by the Monitor on the service list in these CCAA Proceedings of an executed certificate in substantially the form attached as Schedule “A” to the proposed CCAA Termination Order (the “**Monitor’s Certificate**”), these CCAA Proceedings will be terminated without any further act or formality (the “**CCAA Termination Time**”).¹³ The Monitor’s Certificate contemplates certification by the Monitor that all matters to be attended to in connection with these CCAA Proceedings have been completed.¹⁴

¹² See e.g., *Harte Gold Corp et al* (15 February 2022), Ont Sup Ct J [Commercial List] CV-21-00673304-00CL ([CCAA Distribution and Termination Order](#)) at paras 12 and 15 [*Harte Gold*]; *DEL Equipment Inc* (29 October 2020), Ont Sup Ct J [Commercial List] CV-19-629552-00CL ([CCAA Termination Order](#)) at paras 7 and 10 [*DEL*]; *MJardin Group, Inc et al* (3 April 2023), Ont Sup Ct J [Commercial List] CV-22-00682101-00CL ([CCAA Termination Order](#)) at paras 7 and 9 [*MJardin*]; *Chalice Brands Ltd* (28 September 2023), Ont Sup Ct J [Commercial List] CV-23-00699872-00CL ([CCAA Termination Order](#)) at paras 6 and 11 [*Chalice Brands*]; *Old MAV Wind-Down Ltd et al* (12 June 2024), Ont Sup Ct J [Commercial List] CV-23-00709610-00CL ([CCAA Termination Order](#)) at paras 7 and 10 [*MAV*].

¹³ Draft CCAA Termination Order at para 3; Motion Record, Tab 2, p 14 [[A2447;A14](#)].

¹⁴ Draft CCAA Termination Order at Schedule “A”; Motion Record, Tab 2, p 20 [[A2453;A20](#)].

19. The Applicants submit that it is appropriate for this Court to order that the CCAA Proceedings shall be terminated and that KSV be discharged as Monitor as at the CCAA Termination Time, including because:

- (a) the limited Remaining Activities that need to be completed before the termination of these CCAA Proceedings will be completed by the CCAA Termination Time;
- (b) the Applicants' cash on hand is expected to be sufficient to address any professional fees, expenses and disbursements required to complete the Remaining Activities;
- (c) the Applicants are of the view that no creditors or stakeholders will be prejudiced by the granting of the CCAA Termination Order and the termination of these CCAA Proceedings; and
- (d) the Monitor has duly and properly discharged and performed its duties and obligations in these CCAA Proceedings in compliance and in accordance with the CCAA and all orders of this Court made in these CCAA Proceedings.

(ii) *The Release of the Released Parties is Appropriate*

20. The proposed CCAA Termination Order orders the release and discharge, effective at the CCAA Termination Time, of the Released Parties from any and all claims that any person may have or be entitled to assert against any of the Released Parties, based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, these CCAA Proceedings or with respect to their respective conduct in these CCAA Proceedings (collectively, the “**Released Claims**”).¹⁵

¹⁵ Draft CCAA Termination Order at para 8; Motion Record, Tab 2, p 16 [[A2449;A16](#)].

21. The Court summarized the factors relevant to the approval of releases in CCAA proceedings in *Lydian International Limited (Re)*:

- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefitted the debtors as well as the creditors generally.¹⁶

22. The Court has granted similar releases in the context of granting Orders terminating other CCAA proceedings.¹⁷

23. The Applicants submit that it is appropriate to release the Released Parties from the Released Claims effective as at the CCAA Termination Time for the following reasons:

- (a) the Monitor has made significant contributions to these CCAA Proceedings for the benefit of the Applicants' stakeholders, including, among other things, assisting the Applicants in successfully completing the Transaction and taking on the expanded

¹⁶ *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para 54.

¹⁷ See e.g., [Chalice Brands](#) at para 17; [DEL](#) at para 17; [MAV](#) at para 12; *Greenspace Brands Inc et al* (26 September 2023), Ont Sup Ct J [Commercial List] CV-23-00697516-00CL ([CCAA Distribution and Termination Order](#)) at para 22; *McEwan Enterprises Inc* (21 December 2021), Ont Sup Ct J [Commercial List] CV-21-00669445-00CL ([CCAA Termination Order](#)) at para 16.

powers to direct post-closing and wind-down matters pursuant to the Ancillary Relief Order;

- (b) the purpose of the releases is to achieve finality for the Released Parties in connection with the termination of these CCAA Proceedings, in turn assisting in bringing these CCAA Proceedings to a conclusion;
- (c) the proposed releases relate to claims arising out of, or in respect of, these CCAA Proceedings and conduct in these CCAA Proceedings, and are not overly broad; and
- (d) the releases do not release any Released Party from any claim or liability that is finally determined by a court of competent jurisdiction to have constituted gross negligence or wilful misconduct on the part of the applicable Released Party.

24. Accordingly, the Applicants respectfully submit that the releases set forth in the proposed CCAA Termination Order are reasonable and justified in the circumstances and should be approved by this Court.

B. The Monitor's Reports, Activities and Professional Fees

(i) Approval of the Monitor Reports and Activities

25. This Court has held that there are good policy and practical reasons for approving a court officer's report and activities, including that Court approval:

- (a) allows the court officer to move forward with the next steps in the proceedings;
- (b) brings the court officer's activities before the court;

- (c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;
- (d) enables the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f) protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.¹⁸

26. The Applicants submit that it is appropriate to approve the Monitor Reports and the activities and conduct of the Monitor described therein because:

- (a) the activities described in the Monitor Reports were necessary and undertaken in good faith pursuant to the Monitor's duties and powers set out in the Orders of this Court granted in these CCAA Proceedings, including the ARIO, the ARVO and the Ancillary Relief Order;
- (b) the Monitor's activities were undertaken in the best interests of the Applicants' stakeholders; and
- (c) the Monitor Reports were served on the service list in these CCAA Proceedings and posted on the Monitor's website for review by the Applicants' creditors and

¹⁸ *Target Canada Co, Re*, [2015 ONSC 7574](#) at para [12](#); *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras [13–14](#) [*Laurentian*].

other stakeholders, and there have been no adverse comments received in respect thereof.

(ii) *Approval of the Accounts of the Monitor and its Counsel*

27. The ARIO directs that the Monitor and its legal counsel shall pass their accounts from time to time and that they shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges.¹⁹

28. The overarching test on a motion to pass the accounts of a monitor and its counsel is to evaluate them based on the “overriding principle of reasonableness”, with the predominant consideration being the overall value contributed by the monitor and its counsel.²⁰ The Court has held that it “does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”²¹

29. The Court has held that the following non-exhaustive list of factors assist courts in evaluating the fairness and reasonableness of a court-appointed officer’s fees and those of its counsel:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;

¹⁹ *Contract Pharmaceuticals Limited et al* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([Amended and Restated Initial Order](#)) at paras 32–33.

²⁰ *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at para [13](#) [*Nortel*]. See also [Laurentian](#) at para [9](#).

²¹ [Laurentian](#) at para [9](#).

- (d) the time spent;
- (e) the monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.²²

30. Applying these factors to the present case, the Applicants respectively submit that the accounts of the Monitor, as well as those of the Monitor's counsel, should be approved.

31. The fees and disbursements of the Monitor and its counsel are reasonable and appropriate in the circumstances having regard to the scope of activity undertaken by the Monitor in the CCAA Proceedings, and have been validly incurred in accordance with the provisions of the ARIO.²³

32. The Monitor has confirmed that the fees and disbursements of its counsel set out in the invoices appended to the affidavit of Ryan Jacobs sworn September 9, 2024, relate to advice sought by the Monitor and assistance provided by Cassels in respect of these CCAA Proceedings and that, in the Monitor's view, Cassels' fees and disbursements are reasonable and appropriate.²⁴

33. The proposed CCAA Termination Order also approves the fees and disbursements of the Monitor and its counsel to be incurred in completing the Remaining Activities required to finalize

²² *Bank of Nova Scotia v Diemer*, 2014 ONSC 365 at para 9; *Nortel* at para 14; *Laurentian* at para 10.

²³ Sixth Report at s 3.4, para 7 [E838;E11].

²⁴ Sixth Report at s 3.4, para 7 [E838;E11].

the wind-down activities and terminate these CCAA Proceedings. Such approval of the Fee Accrual is appropriate in order to bring these CCAA Proceedings to a conclusion in an efficient and cost-effective manner, without the need for a further court attendance. Courts have granted similar relief in a number of cases.²⁵

C. It is Appropriate to Extend the Stay Period

34. Under Section 11.02(2) 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 satisfies the Court that it has acted, and is acting, in good faith and with due diligence.²⁶

35. The Applicants submit that the proposed extension of the Stay Period is appropriate because:

- (a) the Applicants have acted, and continue to act, in good faith and with due diligence to advance these CCAA Proceedings to their conclusion;
- (b) the proposed extension of the Stay Period is required to enable the Applicants and the Monitor to facilitate and complete the Remaining Activities;
- (c) the Applicants are expected to have sufficient liquidity to complete the Remaining Activities through to the CCAA Termination Time; and
- (d) the Applicants do not believe that any creditor or stakeholder will be materially prejudiced if the extension of the Stay Period is granted.

²⁵ See e.g., [Harte Gold](#) at para 11; [DEL](#) at para 6; [MJardin](#) at para 6; [Chalice Brands](#) at para 5; [MAV](#) at para 6.

²⁶ [Companies' Creditors Arrangement Act](#), R.S.C. 1985, c. C-36, s 11.02(3).

36. Accordingly, the Applicants submit that the proposed extension of the Stay Period is reasonable and appropriate in the circumstances.

IV. ORDER REQUESTED

37. For the reasons set out above, the Applicants respectfully request that this Court grant the CCAA Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 13, 2024

Goodmans LLP

Goodmans LLP

Christopher Armstrong (LSO# 55148B)
carmstrong@goodmans.ca

Erik Axell (LSO# 85345O)
eaxell@goodmans.ca

Jennifer Linde (LSO# 86996A)
jlinde@goodmans.ca

SCHEDULE A

LIST OF AUTHORITIES

1. *Harte Gold Corp et al* (15 February 2022), Ont Sup Ct J [Commercial List] CV-21-00673304-00CL ([CCAA Distribution and Termination Order](#))
2. *DEL Equipment Inc* (29 October 2020), Ont Sup Ct J [Commercial List] CV-19-629552-00CL ([CCAA Termination Order](#))
3. *MJardin Group, Inc et al* (3 April 2023), Ont Sup Ct J [Commercial List] CV-22-00682101-00CL ([CCAA Termination Order](#))
4. *Chalice Brands Ltd* (28 September 2023), Ont Sup Ct J [Commercial List] CV-23-00699872-00CL ([CCAA Termination Order](#))
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6. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
7. *Greenspace Brands Inc et al* (26 September 2023), Ont Sup Ct J [Commercial List] CV-23-00697516-00CL ([CCAA Distribution and Termination Order](#))
8. *McEwan Enterprises Inc* (21 December 2021), Ont Sup Ct J [Commercial List] CV-21-00669445-00CL ([CCAA Termination Order](#))
9. *Target Canada Co, Re*, [2015 ONSC 7574](#)
10. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
11. *Contract Pharmaceuticals Limited et al* (22 December 2023), Ont Sup Ct J [Commercial List] CV-23-00711401-00CL ([Amended and Restated Initial Order](#))
12. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
13. *Bank of Nova Scotia v Diemer*, [2014 ONSC 365](#)

SCHEDULE B

STATUTORY REFERENCES

Companies' Creditors Arrangement Act RSC 1985, c C-36, as amended

Stays, etc. — other than initial application

11.02 (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.

Stays, etc. – Burden of proof on application

11.02 (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.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED**

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GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher Armstrong (LSO# 55148B)
carmstrong@goodmans.ca

Erik Axell (LSO# 85345O)
eaxell@goodmans.ca

Jennifer Linde (LSO# 86996A)
jlinde@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants