

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 15
	:	
CONTRACT PHARMACEUTICALS LIMITED, <i>et</i>	:	Case No. 24-10915 (___)
<i>al.</i> , ¹	:	(Joint Administration Requested)
Debtors in a Foreign Proceeding.	:	

**DECLARATION OF CHRISTOPHER ARMSTRONG IN SUPPORT OF (A)
FOREIGN REPRESENTATIVE’S VERIFIED PETITION UNDER CHAPTER
15 FOR RECOGNITION OF THE CANADIAN PROCEEDINGS AND
REQUEST FOR RELATED RELIEF, (B) FOREIGN REPRESENTATIVE’S
MOTION FOR PROVISIONAL RELIEF PURSUANT TO SECTION 1519 OF
THE BANKRUPTCY CODE, AND (C) FOREIGN REPRESENTATIVE’S
MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING AND
ENFORCING THE RVO ORDER, (II) APPROVING THE SALE
TRANSACTION FREE AND CLEAR OF LIENS, CLAIMS, AND
ENCUMBRANCES, AND (III) GRANTING RELATED RELIEF**

I, Christopher Armstrong, to the best of my information and belief, state as follows:

1. I am over the age of 18 and, except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my opinion based upon my experience and knowledge of the Debtors’ operations and financial condition according to the information provided to me in that respect, my review of relevant documents (including the petition for recognition) or other information supplied to me. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this declaration.

2. This declaration contains statements of legal opinion and statements of fact. Where the matters stated in this declaration are statements of legal opinion, such statements are

¹ The Debtors in these Chapter 15 cases and the last four digits of their tax identification numbers are: Contract Pharmaceuticals Limited (9212), CPL Canada Holdco Limited (0001), Contract Pharmaceuticals Limited Canada (0003), Glasshouse Pharmaceuticals Limited Canada (0001), and Glasshouse Pharmaceuticals LLC (7890). The Debtors’ head office is located at 7600 Danbro Crescent, Mississauga, ON L5N 6L6.

based upon my experience as a practicing lawyer admitted and licensed to practice in the Province of Ontario, Canada.

3. I am a Partner of the Canadian law firm of Goodmans LLP, Bay Adelaide Centre - West Tower, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7. Goodmans LLP is Canadian counsel to the Debtors in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") proceedings of the Debtors (the "Canadian Proceedings").

4. I submit this declaration in support of (A) the *Foreign Representative's Verified Petition under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief* (together with the form petitions filed concurrently therewith, the "Petition"), (B) the *Foreign Representative's Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* (the "Provisional Relief Motion"), and (C) the *Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing the RVO Order, (II) Approving the Sale Transaction Free and Clear of Liens, Claims, and Encumbrances, and (III) Granting Related Relief* (the "RVO Motion").²

Professional Background and Qualifications

5. I attended Queen's University where I graduated with a B.A. (Honours) and I attended Osgoode Hall Law School where I graduated with an LL.B degree. I was admitted to the Ontario Bar in 2008.

6. I have extensive experience in the field of Canadian insolvency and restructuring law. Insolvency matters in which I have been involved include, among others, the Canadian proceedings of: (i) Nortel Networks, (ii) Loyalty One (Air Miles), (iii) Toys "R" Us Canada, (iv) Bumble Bee/Clover Leaf Seafoods, and (iv) Cirque du Soleil. I have experience

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Petition.

acting for debtor companies, court-appointed officers (monitors, trustees and receivers), secured and unsecured creditors and other stakeholders.

7. My expertise in Canadian insolvency and restructuring law has been recognized in various industry publications, including Chambers and Partners, IFLR1000 and Best Lawyers in Canada. I am a member of the Insolvency Institute of Canada and previously taught an advanced Canadian restructuring course for a number of years at Western University Law School.

The Debtors' Canadian Proceedings

8. On December 14, 2023, Contract Pharmaceuticals Ltd. (“CPL”), CPL Canada Holdco Limited, Contract Pharmaceuticals Limited Canada, Glasshouse Pharmaceuticals Limited Canada, and Glasshouse Pharmaceuticals LLC (collectively, the “Debtors”), filed an application for CCAA protection (the “CCAA Initial Application”) with the Ontario Superior Court of Justice (Commercial Court) (the “Canadian Court”). On December 15, 2023, the Canadian Court granted an order, among other things, appointing KSV Restructuring Inc. as monitor of the Debtors, providing for a broad stay of proceedings in favor of the Debtors for an initial period through and including December 22, 2023 (the “Stay Period”), and authorizing CPL to act as foreign representative of the Debtors to apply for foreign recognition and approval of the Canadian Proceedings, including in the United States pursuant to Chapter 15 (the “Initial Order”).

9. At the Comeback Hearing, the Canadian Court granted the Amended and Restated Initial Order (the “ARIO”) which, among other things, extended the Stay Period to and including March 22, 2024.

10. Additionally, on December 22, 2023, the Canadian Court entered the SISP Approval Order, which authorized and directed the Debtors to undertake a refinancing, sale and

investment solicitation process (a “SISP”) for the purpose of identifying and effectuating a transaction for the Debtors’ business to continue as a going concern.

11. On March 21, 2024, the Canadian Court entered the Stay Extension Order, which further extended the Stay Period to and including April 12, 2024. On April 10, 2024, a further Stay Extension Order was granted, which extended the Stay Period to and including May 3, 2024. On April 17, 2024, the Canadian Court granted a further Order, which extended the Stay Period to and including June 17, 2024.

12. A complete description of the Debtors and the events leading to the filing of the Canadian Proceedings are set forth in the Petition. However, I wish to specifically call the Court’s attention to certain key facts regarding the mechanics of the Canadian Proceedings and their operation under the CCAA.

13. As described in the Petition, the Debtors commenced the Canadian Proceedings in order to identify and complete a transaction for the Debtors’ business to continue as a going concern. In particular, following the extensive SISP that took place following the commencement of the Canadian Proceedings, CPL entered into the *Share Purchase Agreement between Contract Pharmaceuticals Limited and AIP Elixir Buyer Inc.* dated as of March 30, 2024 (as amended, the “Sale Agreement”) that is the subject of the *Approval and Reverse Vesting Order* (the “RVO” and the transaction with AIP Elixir Buyer Inc. approved thereby, the “RVO Transaction”). On April 17, 2024, the Canadian Court approved the Sale Agreement and granted the RVO. Pursuant to the RVO, certain excluded assets, contracts and liabilities will be transferred or “vested out” of CPL Canada Holdco, CPL Canada and Glasshouse Canada to 1000834899 Ontario Inc. (“ResidualCo”), a newly created “ResidualCo” entity that will become a debtor in the Canadian Proceedings.

Overview of a CCAA Proceeding

14. The CCAA provides for a court-supervised restructuring procedure designed to enable financially distressed companies to avoid foreclosure or seizure of assets and restructure their business and liabilities to maximize the company's value as a going concern for the benefit of creditors and other parties in interest.

15. Pursuant to Section 9 of the CCAA, proceedings under the CCAA are commenced by application to the court that has jurisdiction in the province within which the head office or chief place of business of a debtor company in Canada is situated, or, if the debtor company has no place of business in Canada, in any province within which any assets of the company are situated. The debtor's assets and affairs are subject to the supervision of the applicable Canadian court during the pendency of the CCAA proceedings.

16. Here, the Canadian Proceedings were commenced by filing the CCAA Initial Application with the Canadian Court pursuant to, *inter alia*, the CCAA.

17. The CCAA is federal legislation in Canada. Its full title is "An Act to facilitate compromises and arrangements between companies and their creditors." The CCAA applies in respect of a debtor company or affiliated debtor companies if the total claims against such debtor company or affiliated debtor companies, determined in accordance with the CCAA, is more than CA\$5,000,000. A "debtor company" includes a company that is bankrupt or insolvent.

18. Section 11.02 of the CCAA states that the court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose: (i) staying all proceedings taken or that may be taken in respect of the debtor company under certain statutes; (ii) restraining further proceedings in any action, suit or proceeding against the

debtor company; and (iii) prohibiting the commencement of any action suit or proceeding against the debtor company.

19. Upon the granting of an initial order in a CCAA proceeding, the debtor company's assets will become the subject of the supervision of the court that has granted the initial order. Specifically:

- a) the stay of proceedings granted in favor of the debtor company will be for an initial period that may not exceed 10 days and will be subject to renewal at a comeback hearing. The stay of proceedings may be renewed periodically by motion to the court in accordance with Section 11.02(2) of the CCAA;
- b) the initial order, as amended and extended at the comeback hearing, as the case may be, can contemplate a vast array of relief and restructuring measures. By way of example, the initial order may (and will often) grant the debtor company authorization to utilize its cash management systems, borrow under interim financing arrangements that may be the subject of a court-approved priority charge, and place certain restrictions on the debtor company's authority to sell assets, repay obligations, grant security and incur obligations outside of the ordinary course of business;
- c) subject to the provisions of the CCAA and, in particular, section 36 thereof, a debtor company that has commenced proceedings under the CCAA may, with court approval, sell or otherwise dispose of assets outside the ordinary course of business; and
- d) the court retains broad discretion under Section 11 of the CCAA to "make any order that it considers appropriate in the circumstances" on application by any person interested in the matter.

20. As noted above, the Canadian Court issued the Initial Order with respect to the Debtors on December 15, 2023.

21. In a CCAA proceeding, absent exceptional circumstances, a debtor's management and board of directors remain in place, and the board maintains its power under Canadian law to approve significant actions, including disposing of important assets, borrowing amounts (i.e. obtaining DIP financing), or changing corporate structures, subject to oversight by a court-appointed monitor (discussed below) and approval of the court.

22. When an order is made on an initial application commencing a proceeding under the CCAA, the court shall at the same time appoint a monitor pursuant to Section 11.7 of the CCAA. The monitor is an independent court officer in the CCAA proceedings who, among other things, (i) monitors the company's ongoing operations, (ii) reports to the court on any major events affecting the company, (iii) notifies the company's creditors of any meetings and tabulates votes at these meetings, if held, (iv) assists with preparing, filing, and holding meetings for voting on any plan of arrangement, (v) approves the disclaimer of contracts and leases, (vi) prepares reports in conjunction with any interlocutory motions by the company or other stakeholders, and (vii) prepares a report on any plan of arrangement, which is usually included in the mailing of the plan, if one is filed. The monitor acts as the "eyes and ears of the court." The person so appointed as monitor must be a licensed insolvency trustee. As noted above, KSV Restructuring Inc. was appointed as the Monitor in the Canadian Proceedings. In some cases, the monitor will also be granted expanded powers to implement the restructuring process for and on behalf of the debtor company or oversee a wind-down.

23. Generally speaking, a proceeding under the CCAA is a judicial proceeding in Canada, dealing with creditors' collective interests generally, pertaining to insolvency. The CCAA addresses debtor companies that are insolvent or bankrupt and provides for an opportunity to compel a minority of creditors to follow the wishes of the majority if the appropriate voting thresholds are met, provides for the possibility of a stay of proceedings while the restructuring is progressing, and allows for various relief and measures to facilitate a restructuring, all under the supervision of the court.

24. The purpose of the CCAA is to provide a court-supervised process that is collective in nature to facilitate the negotiation of compromises and arrangements where

companies are experiencing financial distress, with the overarching objectives, where possible, to (i) maximize creditor recovery, (ii) preserve and restructure in a viable way the operations of the business, and (iii) generally to avoid the potential social and economic consequences resulting from the insolvency of the debtor, for the benefit of its creditors and other stakeholders.

25. A proceeding under the CCAA can be undertaken for the purpose of reorganization, completing a going concern transaction or liquidation:

- a) A debtor company may seek to reorganize by proposing a plan of compromise or arrangement to be voted upon by creditors, and if approved by the requisite majority of creditors, implemented with the approval of the court pursuant to Sections 4 through 6 of the CCAA.
- b) As noted above, the assets of the debtor company can be sold, as a going concern or otherwise, outside of the ordinary course of business with court approval pursuant to Section 36 of the CCAA following consideration of, among other things, certain specified statutory factors.

26. Throughout a CCAA proceeding, the court retains broad discretion to “make any order that it considers appropriate in the circumstances.”

27. In a CCAA proceeding, subject to limited exceptions, clauses triggering termination rights upon the debtor’s commencement of an insolvency proceeding are not enforceable, so contract counterparties may not terminate contracts solely by virtue of the commencement of the CCAA proceeding. Preferential or fraudulent transfers are subject to review under the CCAA, which provides for the avoidance and recovery of such transfers. A monitor in a CCAA proceeding may challenge a transaction as “preferential” if: (1) the debtor was insolvent at the time of the transaction; (2) the transaction took place during the applicable statutory review period; and (3) the transaction was taken with a view to giving that creditor a preference over other creditors (or had the effect of giving a preference in the case of transactions with non-arm’s length parties).

28. In general, creditors will be provided with notice and an opportunity to retain counsel, to appear, to raise objections, and to seek leave to appeal with respect to matters raised in a CCAA proceeding. All creditors of the Debtors, including creditors located in the U.S., are generally afforded the same protections, and are subject to the same procedures and requirements, in the Canadian Proceedings.

Sales under the CCAA

29. Recent Canadian Proceedings have typically included and resulted in one or more of the following: (i) the filing of a plan of arrangement, (ii) the implementation of one or more asset sales, or (iii) the implementation of a business sale through an RVO transaction.

30. The first, a plan of arrangement, generally allows a debtor to emerge as a cleansed and restructured company while retaining possession of its assets, agreements, employees, permits, licenses and tax attributes. This process is similar to a traditional reorganization in a chapter 11 case under the Bankruptcy Code, where the debtor emerges after confirmation of a plan of reorganization. For a plan of arrangement to be binding on each class of creditors, a majority of the proven creditors in that class, by number, together with two-thirds (2/3) of the proven creditors in that class, by dollar value, must approve the plan presented to them. If a class of creditors approves the plan, it is binding on all creditors within the class, subject to the court's approval of the plan. If all of the classes of creditors approve the plan, the court must still sanction the plan as a final step. Upon court approval, the company continues forward as outlined under the plan until it has satisfied the requirements under the plan.

31. The second, an asset sale under the CCAA, is akin to a section 363 sale process under the Bankruptcy Code.

32. The third, an RVO, is an alternative structure for transferring the business of a debtor company to a purchaser, typically utilized where the debtor company has assets that cannot easily be transferred as part of a traditional asset sale process (e.g., licenses, regulatory permits and tax attributes). An RVO generally involves a series of steps, whereby: (1) the purchaser becomes the sole shareholder of the debtor company, either through the sale of shares or via the cancellation and issuance of new shares to the purchaser; (2) the debtor company retains its assets, including key contracts, permits and licenses and certain specified retained liabilities; and (3) the assets and liabilities not retained by the debtor company are “vested out” and transferred into a newly incorporated entity (i.e. a ResidualCo). The ResidualCo may be liquidated using a CCAA plan or bankrupted under Canadian law. The debtor company, now holding only those retained assets and liabilities desired by the purchaser, may exit the insolvency proceeding on a going-concern basis.³

33. In this case, the Debtors have already obtained an RVO approving the Sale Agreement and RVO Transaction that will result in the Purchaser acquiring 100% of the equity interests in CPL Canada Holdco from CPL in accordance with the terms and conditions of the Sale

³ Numerous RVO transactions have been approved by Canadian courts, including *Acerus Pharmaceuticals Corp.*, 2023 ONSC 3314; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828; *Harte Gold Corp. (Re)*, 2022 ONSC 653; *Plasco Energy*, 2015 ONSC 10869; *Stornoway Diamond Corp.*, Montreal, 500-11-057094-191 (Quebec SCJ [Commercial Div.]) (Oct. 7, 2019); *Wayland Group Corp.*, Toronto, CV-19- 00632079-00CL (Ont. SCJ [Commercial List]) (Apr. 21, 2020); *Re Comark Holdings Inc.*, Toronto CV-20-00642013-00CL (Ont. SCJ [Commercial List]) (July 13, 2020); *Beleave Inc.*, CITE; *Arrangement relative a Nemaska Lithium inc.*, 2020 QCCA 1488; *JMB Crushing Systems, Inc. (Re)*, 2020 ABQB 763; *Cirque due Soleil Canada Inc*, Montreal, 500-11-058415-205 (Quebec SCJ [Commercial Div.]) (Oct. 26, 2020); *Green Relief Inc. (Re)*, 2020 ONSC 6837; *Quest University (Re)*, 2020 BCSC 1883; *JMX Contracting Inc.*, Toronto, CV-20-00648528-00CL (Ont. SCJ [Commercial List]) (Feb. 2, 2021); *Salt Bush Energy Ltd.*, Calgary, 2101-06512 (CQB Alberta) (May 21, 2021); *Port Capital Development (EV) Inc.*, Vancouver, S-205095 (SCBC) (Sept. 16, 2022). I am informed by U.S. counsel that RVO transactions have been recognized and enforced in the U.S. under Chapter 15 on several occasions, including by bankruptcy courts in this district. See *In re In re Acerus Pharmaceuticals Corp., et al.*, No. 23-10111 (TMH) (Bankr. D. Del. June 13, 2023), Docket No. 78; *In Re NextPoint Financial Inc., et al.*, No. 23-10983 (Bankr. D. Del. Dec. 11, 2023), Docket No. 155; *In re Just Energy Group Inc., et al.*, No. 21-30823 (MI) (Bankr. S.D. Tex., Dec. 1, 2022), Docket No. 232; *In re CDS U.S. Holdings, Inc., et al.*, No. 20-11719 (CSS) (Bankr. D. Del. Oct. 29, 2020), Docket No. 122.

Agreement, and the vesting of certain excluded assets, contracts and liabilities to ResidualCo. Upon closing of the Sale Agreement, Residual Co. will become a debtor in the Canadian Proceedings.

34. The statutory basis for the RVO is found under sections 11 and 36 of the CCAA. Section 11 of the CCAA gives the Canadian Court the power to issue any order that it considers appropriate in the circumstances, while section 36 of the CCAA allows for the sale or disposition of assets outside of the ordinary course of business if specified criteria are met, and if notice has been given “to the secured creditors who are likely to be affected by the proposed sale or disposition.” CCAA, s. 36(3).

35. The CCAA allows a debtor to dispose of all or substantially all of its business and assets outside of the ordinary course of business without the formal approval of its creditors, provided it obtains prior authorization from the court. The CCAA, however, requires that a notice of motion to the Canadian court for the approval of the transaction be given by the debtor to all of its secured creditors and other parties who are likely to be affected by the proposed sale or disposition.

36. In deciding whether to authorize an RVO or the sale of assets, the CCAA stipulates that the Canadian court is to consider, among other things:

- a) whether the process leading to the proposed sale or disposition was reasonable under the circumstances;
- b) whether the monitor has approved the process leading to the proposed sale or disposition;
- c) whether the monitor filed with the Canadian court a report stating that in its 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.

37. In the case of an RVO, common law authority dictates that Canadian courts also consider the following criteria: (a) whether the RVO is necessary in the circumstances; (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 being paid for the debtor's business reflects the importance and value of the licenses and permits (and other intangible assets) being preserved under the RVO structure.⁴

38. If the required test is met, the Canadian court will normally issue an order authorizing the transfer of the assets on a free and clear basis (other than assumed/permitted encumbrances) or an RVO authorizing the transfer to a residual corporation of all the excluded assets, undertakings and liabilities, providing that the assets retained by the debtor are retained free and clear of all excluded liabilities and vesting the shares of the debtor in a purchaser on a free and clear basis. The order will also provide that creditor claims will have the same priority against any proceeds of the transaction that they had against the assets or shares, prior to the disposition. As noted, in the present case, the Canadian Court has already granted the RVO approving the RVO Transaction.

39. The Canadian Proceedings provide creditors with notice and an opportunity to retain counsel, to appear, to raise objections, and to seek leave to appeal. All creditors of the Debtors, including creditors located in the U.S., are generally afforded the same protections, and are subject to the same procedures and requirements, in the Canadian Proceedings. All parties in interest, including U.S. creditors, have had an opportunity to appear and be heard with respect to,

⁴ *Harte Gold Corp. (Re)*, 2022 ONSC 653 ¶ 38.

and object to, the relief requested in the Canadian Proceedings to date, including entry of the RVO Order, and will have the same opportunity going forward.

Conclusion

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 30th day of April, 2024.
Toronto, Ontario

/s/ Christopher Armstrong
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